

**The House of Lords in 2005: A More
Representative and Assertive Chamber?**

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Preface

The House of Lords is the subject of almost constant attention. However, most of this attention focuses on the prospects for its reform. There is relatively little discussion about how the Lords operates now, and what its impact is on policy and politics. Similarly, the effect of the reform that has already taken place - in 1999, to remove the bulk of the hereditary peers - is little examined. Instead the chamber is seen as being constantly in a transitional state, always awaiting the next stage of its reform. As such it is widely deemed inadequate, often dubbed 'weak', and generally passed over since it is not expected to be around in its present form too much longer.

The irony is that this has been the case not just since 1997, but through most of the twentieth century. During that time the Lords underwent a series of reforms, each considered minimal and short term. Yet some of these - notably the passage of the Parliament Acts in 1911 and 1949 and the creation of life peers in 1958 - made a substantial difference to how the chamber operated and how it was perceived. And all of these reforms, despite their intent as stopgap measures, continue to define the powers and membership of the chamber today.

We should then question whether the reform of 1999 might similarly prove less than minimal. This is a question of importance in its own right, but doubly so if it turns out that we wait as long for the next stage of reform as we waited for the last. The question is the focus of a research project at the Constitution Unit funded by the ESRC (grant no. RES-000-23-0597) running from 2004 to 2007.¹ This briefing is a product of the project.

In this briefing we look at the work of the House of Lords in the calendar year 2005. We argue that it may in retrospect be seen to be an important year for the development of the Lords. The chamber proved to be assertive in its treatment of government legislation, became more representative in its membership, and ended the year with new friends on the liberal left as well as the traditional conservative right. Although the story presented here ends in December 2005 (due to the origins of the briefing - see below), more recent events appear to bear out our conclusions. In particular, the government in February suffered two defeats in the House of Commons on the Racial and Religious Hatred Bill - with Labour rebels prepared to back amendments to the bill made by the House of Lords. Shortly afterwards the government announced that it would not seek to reverse key defeats to the Identity Cards Bill made in the Lords, presumably in fear of this behaviour being repeated. It remains early days to assess whether the House of Lords is a stronger and more supported institution than it was before 1999, but the evidence is certainly gathering. We suggest that this has the potential to change two of the fundamentals of British

Summary of key points

- There was no progress on Lords reform during 2005. Labour opinion remained split, and the party's manifesto promised another free vote on composition alongside a cut to the Lords' delaying power. But no firm action followed. The Conservatives may be equally split, but new leader David Cameron appointed Ken Clarke (co-author of proposals published early in the year to create a largely elected House) as co-ordinator of a party taskforce on democracy.
- The election of the third Labour government in May on only 35 percent of the vote, which delivered 55 percent of House of Commons seats, led to renewed questioning of the legitimacy of government seeking to get its legislation through parliament unamended. This point was particularly stressed by the Liberal Democrats (long time supporters of PR) who used it to renounce the 'Salisbury convention' whereby the House of Lords should not block government manifesto measures. These claims were helped by the fact that the Lords is now more representative in party terms - indeed reflecting the balance of general election vote shares more closely than does the House of Commons.
- Changes in membership of the Lords in the year included 46 new appointees and 21 deaths and retirements (see appendices for details). The size of the chamber therefore continues to grow, seemingly inexorably. The balance of power continues to be held by the Liberal Democrats and Crossbenchers, but there is growing interest in membership amongst the minor parties.
- The year saw the biggest row between the government and the Lords since the early twentieth century, over the Prevention of Terrorism Bill. This resulted in 18 government defeats, some very large, significant rebellions amongst Labour peers, and the longest

Introduction

The year 2005 may well be seen as highly significant for the House of Lords, though not for reasons that might have been expected. During Labour's first term of office, and the early part of its second, many had hoped that this general election would see the first directly-elected members of the UK's second chamber. However, thanks to lack of agreement over Lords reform, this did not occur. Neither Labour's 2005 manifesto nor post-election announcements provided any greater prospect of reform in the third term. If anything, a settlement looked further away than ever. By 2005, the notion that the chamber, dubbed 'transitional' in 1999 (with the departure of most hereditary peers), might continue to exist for many years

The group's Second Chamber of Pa

By the end of December 2005 the chamber had 719 members, as shown in Table 2, significantly more than the 666 entitled to sit after the hereditaries departed in 1999. Despite 21 deaths (see Appendix B), new appointments continue to increase the size of the chamber inexorably. This is not helped by the system of by-elections built into the 1999 Act to replace hereditary members who die. Four new members entered the chamber via this route in 2005.¹¹

Table 2: Composition of the House of Lords, 1 January 2006

Affiliation	Life Peers	Hereditary Peers	Serving Law Lords	Bishops	Total
Conservative	156	49	0	0	205
Labour	206	4	0	0	210
Lib. Dem.	69	5	0	0	74
Crossbench [†]	149	32	12	0	193
Bishops	0	0	0	26	26
Other [†]	9	2	0	0	11
Total	589	92	12	26	719

[†] : House of Lords website

†

should be dropped. Although the party ultimately decided against change, it too embraced the notion that it was 'owed' a certain number of seats by virtue of its general election votes.

The most vocal group on the implications of the new pattern of representation in the Lords, however, was the Liberal Democrats. Holding 15 per cent of party seats, and given the relatively low propensity of the Crossbenchers to vote, in practice they generally hold the balance of power. When the Liberal Democrats vote with the government in the Lords, it generally wins; when they vote with the Conservatives, it generally loses. Only 13 of the 293 government defeats in the Lords since 1999 occurred despite Liberal Democrat support.

A change of attitude by the Liberal Democrats is thus highly significant, and just such a change was seen in the latter part of 2005. Given the government's poor share of the general election vote, the Lib Dems – long committed to proportional representation – started to question Labour's legitimacy to force through its policies. In particular the conventions of the House of Lords came increasingly into doubt. As the then party leader, Charles Kennedy, said in his response to the Queen's Speech in the House of Commons:

Since 1947, the House of Lords has operated the Salisbury convention, which recognises that back then, nearly 60 years ago, there was a majority Labour Government but an overwhelmingly Conservative hereditary-dominated House of Lords. ... in those days the Labour majority in this House was 146, supported by 48 per cent of the popular vote cast at (h)]7u0ht4us House 04 Tctd96[4aanglyral Deo fentcwhelmique the Lo

MPs by insisting that these would be made in the Lords, not the Commons. Consequently, 62 Labour MPs rebelled on a cross-party amendment requiring all control orders to be made on the authority of a court rather than ministers. This reduced the government's majority to 14, then the second smallest since 1997.¹⁵ Immediately afterwards, Robin Cook, appearing on Newsnight, suggested that the Commons had 'sent the House of Lords a message' that concessions should be sought. That such a senior Labour backbencher would appeal to the second chamber to defeat his government demonstrated the degree of change in the interaction between the Commons and the Lords.

When the bill reached the Lords, the government introduced amendments so that the most severe control orders, resulting in house arrest, would be issued by the courts and not politicians.¹⁶ However, this was insufficient for peers, who insisted that the courts should make all control orders. This was to be the biggest issue of principle when the bill was debated. Also highly controversial was the proposal by the opposition parties to insert a 'sunset clause', to ensure that the bill expired after a specified time.¹⁷ This, they argued, would enable a more considered bill to be fully debated, without the pressure of time created by the court ruling. Before the bill even entered Parliament there had been intense meetings between party leaders on these and other issues, which continued throughout. Notably the Liberal Democrats, despite their relative weakness in the Commons, attended these on an equal basis to the Conservatives, in silent recognition of their pivotal position in the Lords.

The Prevention of Terrorism Bill evoked a level of resistance from the second chamber unprecedented since the constitutional crisis sparked by Lloyd George's budget in 1909. In total there were 18 government defeats. Not just the number but the size of these was significant: only eight times since 1999 has the government lost by over 100 votes in the Lords, and six were on this bill.¹⁸ The scale of defeats reflected the strength of opinion across the chamber. The largest, on the inclusion of a sunset clause of 30 November 2005, saw the government lose by 187 votes.⁹⁵ -2.125 Tch-

claimed that: 'we have a sunset clause that "would smell as sweet" and sound as sweet "by any other name"'.²²

The row over the Prevention of Terrorism Bill was atypical in various ways. First, there were extraordinary time pressures on the government to enact the bill. Second, the confrontation took place when the general election was anticipated shortly, a situation which both government and opposition sought to turn to their advantage. It seemed that Tony Blair was relishing a fight with his opponents, to appear responsive to perceived populist pressure on terrorism. Conservative leader Michael Howard went so far as to suggest: 'We have said that we will co-operate with the government if there is a sunset clause in the Bill. I have come to the conclusion that this Prime Minister wants this Bill to fail'.²³

particularly contentious. By the end of the session there had been 37 defeats (see Table 3), compared to 64 in 2003-04. However, the better comparator is the short session prior to the 2001 election, when there were 40 Lords divisions and only two defeats. In 2004-5, in contrast, there were 67 divisions, more than half of which resulted in defeat. Even after divisions on the Prevention of Terrorism Bill are subtracted, the government still lost 19 votes in this session. This is a dangerously small data set on which to detect a trend, but it does little to counter the notion of a more assertive chamber.

Table 3: Government defeats in the House of Lords, 2005*

Subject	Calendar year 2005	2004-05 session total
Commissioners for Revenue and Customs Bill	2	2
Constitutional Reform Bill	2	4
Disability Discrimination Bill	1	1
Education Bill	5	5
Gambling Bill	1	1
Inquiries Bill	2	2
Prevention of Terrorism Bill	18	18
Public Services (Redesign) Bill	5	

2005-06 session total: 37

reconvened and asked to report by 31 December.²⁸ Some peers expressed concern that the tradition of 'self-regulation' in the chamber would be eroded, but the government is in no position to force an outcome on peers, who will decide the matter themselves.

The second subject of 'ping pong' was the Inquiries Bill, setting out procedures for the establishment of inquiries into matters of public concern, such as the recent Hutton and Butler investigations into aspects of the Iraq war. In a report published shortly after the bill,²⁹ the House of Commons Public Administration Select Committee (PASC) recommended a draft amendment stipulating that the terms of reference of inquiries into ministerial misconduct should be set by Parliament, not by ministers. It also backed the Lord Chief Justice's proposal that he should have a veto over which inquiries judges should chair. The bill started in the Lords and appropriate amendments were tabled by Conservative and Liberal Democrat peers. In both cases the government was defeated. But when the bill reached the Commons, shortly before the end of the session, these defeats were reversed. At third reading an amendment was tabled by PASC members Tony Wright and Anne Campbell on the first of these matters, but later withdrawn (in part due to pressure of time). Thus, on its return to the Lords, the government, argued that the bill had no 'bouncebackability', and that peers should not press the point, as PASC members were now prepared to back the bill.³⁰ Consequently, the Liberal Democrats withdrew their support for the amendments. Here the Lords had again pursued MPs' concerns on a bill but, in Robin Cook's words, the Commons had not 'sent the Lords a message' that was loud enough.³¹ Ironically, Tony Wright himself had often indicated how Labour MPs reluctantly vote for government measures, knowing that 'the Lords will sort it out'.³² On this occasion the Lords demonstrated its reluctance to 'sort it out' on its own, once a measure had been abandoned by its Commons proponents.

The 2005-6 parliamentary session held many prospects for trouble in the Lords, but they remained largely untested by the end of the calendar year. The legislative programme included the controversial Identity Cards Bill, as well as the new Terrorism Bill and Racial and Religious Hatred Bill. All faced a potentially rocky passage in the Lords. Attempts to create an offence of incitement to religious hatred had twice been decisively defeated by peers in 2001 and were subsequently dropped.³³ There were major campaigns against the proposal and a small rebellion amongst Labour MPs. The government suffered an unusually large defeat during the Lords committee stage on a cross-party amendment to tighten up the definition of religious hatred - losing by 145 votes. On both ID cards and terrorism, the government sought to head off trouble by making concessions before the bills were introduced. On the latter, a new offence of 'glorifying' terrorism was initially proposed, but was amended following resistance by opposition parties and senior judges. (Such cases indicate the difficulty of measuring the Lords' power, in that much of Parliament's real influence comes through preventing measures ever being introduced, rather than through defeats.) Nonetheless, the Commons defeated the government in November over the proposals in the bill to hold terrorist suspects without charge for up to 90 days. This defeat can be seen to have taken place 'in the shadow' of potential Lords opposition. It was fairly clear, given the events earlier in the year, that the peers would defeat the measure if it

²⁸ The committee had initially been established in July 2003, shortly after the planned abolition of the Lord Chancellor had been announced. Its first report was published that November: Report of the Committee on the Speakership of the House, [http://www.parliament.gov.uk](#), HL 199, 2002-03.

²⁹ Public Administration Select Committee, [http://www.pasc.parliament.gov.uk](#), HC 51-I, 2004-05.

³⁰ Baroness Ashton of Upholland, HL Debs., 7 April 2005, c. 891.

³¹ Events might have developed differently had the matter come before the Commons with more opportunity for debate, but the imminence of the election allowed ministers to tell MPs that the whole bill would be lost if the amendments were pressed.

³² For example speaking on the House of Lords Reform Bill: HC Debs., 21 January 2003, c. 217.

³³ The government had attempted to add the clause to the Anti-Terrorism, Crime and Security Bill but was defeated by 99 votes at report stage and 113 votes during 'ping pong'.

reached them. MPs could either wait for this to happen, or they could deal with the matter themselves. Strengthened in the knowledge that defeat would occur in either case (and of course by the narrower Commons majority) they chose to take the latter course. On other matters in the bill, notably the amended glorification clause, MPs expressed discontent but ultimately backed down. By the end of the year this remained for the Lords to sort out.

Finally, there was an unusual level of tension over delegated legislation, where the Lords has a power of veto which, by convention, it does not use. The biggest incident concerned implementing controversial measures liberalising drinking hours under the Licensing Act 2003, which depended on an order-making power. In November, the opposition parties tried to block the necessary order in the Commons, threatening to throw the new licensing regime into disarray. There were strong rumours that the order would be defeated in the Lords, but in the end peers contented themselves with defeating the government on a motion condemning the order, rather than the order itself. Equally tense was the question of a proposed order under the Criminal Justice Act 2003 to restrict the right to trial by jury in complex fraud cases. The government had gained this order-making power as part of a compromise with the Lords over the original bill,

The perceived greater representativeness of the second chamber has put great pressure on its conventions. Controversial measures in Labour's (unusually long and detailed) manifesto may yet lead to their total collapse. Aspirations to codify the conventions appear doomed, through lack of political agreement – never minding the sheer technical complexity. But larger-scale reform also remains unlikely. Both main parties are split over issues of composition, whilst proposals to limit the chamber's powers would meet with major resistance in the Lords itself. Labour's manifesto commitment to limit the chamber's time for consideration of legislation caused Liberal Democrat Leader Lord McNally to pledge repeatedly to 'use every power at my disposal, irrespective of the Salisbury convention' to preserve the powers of the current House.³⁴

The new dynamic of the House of Lords may therefore alter British politics in fundamental ways and prove difficult to reverse. Meanwhile, despite continuing dissatisfaction with the undemocratic basis of the chamber, this appears to suit the public. Survey evidence released by the Constitution Unit in December 2005 showed that two-thirds of the pu(thn D)]TJ5 0 TDmJ5 0 TDm.5(mTc)

Appendix A: New members of the House of Lords in 2005

Date took oath	Lords name	Party	Previous name	Route entered House†	Notes
19/01/2005	Lord Patten of Barnes	Conservative	Chris Patten	PM	Ex European Commissioner
31/01/2005	Lord Kinnock	Labour	Neil Kinnock	PM	Ex European Commissioner
25/01/2005	Earl Glasgow	Lib Dem	Earl Glasgow	HBE	Replaced Earl Russell
15/03/2005	Lord De Mauley	Conservative	Lord De Mauley	HBE	Replaced Lord Burnham
04/04/2005	Viscount Eccles	Conservative	Viscount Eccles	HBE	Replaced Lord Aberdare
21/06/2005	Lord Hope of Thornes	Crossbench	David Hope	PM	Ex Archbishop of York
23/05/2005	Lord Adonis	Labour	Andrew Adonis	PM	Ex Downing St adviser
23/05/2005	Lord Ramsbotham	Crossbench	David Ramsbotham	APC	Ex Chief Inspector of Prisons
24/05/2005	Lord Stevens of Kirkwhelpington	Crossbench	John Stevens	PM	Ex Metropolitan Police Commissioner
14/06/2005	Lord Kirkwood of Kirkhope	Lib Dem	Archy Kirkwood MP	DH	
14/06/2005	Baroness Taylor of Bolton	Labour	Ann Taylor MP	DH	
15/06/2005	Lord O'Neill of Clackmannan	Labour	Martin O'Neill MP	DH	
15/06/2005	Lord Tyler	Lib Dem	Paul Tyler MP	DH	
21/06/2005	Baroness Morris of Yardley	Labour	Estelle Morris MP	DH	
22/06/2005	Lord Howarth of Newport	Labour	Alan Howarth MP	DH	
22/06/2005	Lord Foster of Bishop Auckland	Labour	Derek Foster MP	DH	
27/06/2005	Lord Chidgey	Lib Dem	David Chidgey MP	DH	
27/06/2005	Baroness Tonge	Lib Dem	Jenny Tonge MP	DH	
28/06/2005	Lord Foulkes of Cumnock	Labour	George Foulkes MP	DH	
28/06/2005	Lord Hamilton of Epsom	Conservative	Archy Hamilton MP	DH	
28/06/2005	Viscount Montgomery of Alamein	Crossbench	Viscount Montgomery	HBE	Replaced Baroness Strange
29/06/2005	Lord Jones of Cheltenham	Lib Dem	Nigel Jones MP	DH	
29/06/2005	Baroness Shepherd of Northwold	Conservative	Gillian Shepherd MP	DH	

Date took oath	Lords name	Party	Previous Name	Route entered House†	Notes
05/07/2005	Lord Moonie	Labour	George Moonie MP	DH	
06/07/2005	Baroness Bottomley of Nettlestone	Conservative	Virginia Bottomley MP	DH	
06/07/2005	Lord Mawhinney	Conservative	Brian Mawhinney MP	DH	
13/07/2005	Baroness Clark of Calton	Labour	Lynda Clark MP	DH	
13/07/2005	Lord Soley	Labour	Clive Soley MP	DH	
18/07/2005	Lord Smith of Finsbury	Labour	Chris Smith MP	DH	
18/07/2005	Baroness Adams of Craigielea	Labour	Irene Adams MP	DH	
19/07/2005	Baroness Fritchie	Crossbench	Dame Rennie Fritchie	APC	Ex Commissioner for Public Appointments
19/07/2005	Lord Anderson of Swansea	Labour	Donald Anderson MP	DH	
20/07/2005	Baroness Corston	Labour	Jean Corston MP	DH	
20/07/2005	Lord Goodlad	Conservative	Alastair Goodlad MP	DH	
11/10/2005	Lord Cunningham of Felling	Labour	Jack Cunningham MP	DH	
12/10/2005	Lord Mance	Crossbench	Lord Justice Mance	LOA	
12/10/2005	Lord Turner of Ecchinswell	Crossbench	Adair Turner	APC	Ex Director of CBI
17/10/2005	Bishop of Exeter	Bishop	Bishop of Exeter	B	Replaced retiring Bishop of Derby
18/10/2005	Lord Rees of Ludlow	Crossbench	Sir Martin Rees	APC	President of the Royal Society
25/10/2005	Baroness Deech	Crossbench	Ruth Deech	APC	
25/10/2005	Baroness Valentine	Crossbench	Jo Valentine	APC	
06/12/2005	Lord Hastings of Scarisbrick	Crossbench	Michael Hastings	APC	
07/12/2005	Lord Turnbull	Crossbench	Andrew Turnbull	PM	Retiring Cabinet Secretary

† Key: PM = Prime Minister's Appointment, HBE = Hereditary Byelection, APC = Appointments Commission, DH = Dissolution Honours, LOA = Lord of Appeal, B = Bishop

* Nicholas Lyell left the House of Commons in 2001

Appendix B: Deaths and retirements in 2005

† Key: B = Bishop, HD = Hereditary Peer elected to serve as Deputy Chairman, HP = Hereditary Peer elected by party, L = Life Peer under the Life Peerages Act 1958, LOA = Lord of Appeal.
* Retired.

Appendix C: Government defeats in the House of Lords in 2005

Date of Division	Bill	Subject	Govt majority
2/2005		To require that people diagnosed as suffering from depression for at least six months must be treated as having long-term impairment	-7

Date of Division	Bill	Subject	Govt majority
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Date of Division	Bill	Subject	Govt majority
	2005 (Motion for Approval)	opinion on the matter, either through democratically elected institutions or by means of a referendum”	
22/03/2005	Commissioners for Revenue and Customs Bill	To ensure that instructions for when confidential taxpayer information can be disclosed should only be delegated to the commissioners or a single commissioner (public interest grounds)	-11
22/03/2005	Commissioners for Revenue and Customs Bill	To remove a clause stipulating that disclosures requested by the Treasury are subject to a statutory instrument, proposing that a ‘super-affirmative’ alternative would be preferable	-8

