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Executive Summary

The Royal Commission on the Reform of the House of Lords, chaired by Lord Wakeham, reported in January 2000. This briefing provides a summary of its recommendations, with a commentary, and proposes that many of these recommendations could be implemented immediately, without legislation.

- The Wakeham Commission had a large and complex remit, and was given very little time to report. Especially given the speed of other constitutional changes, it is no surprise that the Commission was unable to come up with a fully satisfactory blueprint.
- The Commission proposes that the powers of the chamber remain largely unchanged, and this is broadly welcomed. The legislative powers of the chamber are moderate in international terms. However, the Commission rejected giving the chamber new constitutional powers, which leaves us out of step with other Western democracies.
- The Commission's proposals that new committees be established is welcomed. These include a new Constitutional Committee, Human Rights Committee, Devolution Committee and Treaties Committee. The House of Lords should act to implement these recommendations as soon as possible.
- The continued role which the Commission propose for the chamber in EU and delegated legislation is welcomed. New conventions could introduce the proposed changes to powers over delegated legislation immediately.
- The proposal that Commons ministers be given access to the upper house is sensible. This could be implemented immediately, on a reciprocal basis.
- The Appointments Commission has been carefully designed to maximise public confidence in the chamber, and end political patronage. Since a Commission is currently being established for the transitional house, it should be given the same responsibilities. These include controlling the party balance, making political appointments, and ensuring the chamber is balanced in gender, ethnic and regional terms.
- The balance between elected and appointed members proposed by Wakeham may result in a chamber with insufficient legitimacy to carry out its job. The proposed chamber is also very large. A cut in the number of appointees would solve both problems.
- The proposals do not properly take account of devolution. There should be clearer links built with the devolved institutions, and the proportion of 'regional' members in the chamber should be much higher.
- Wakeham has failed to grasp the nettle on the bishops and the law lords. There is no place for these groups in a modern upper house. We should have an independent supreme court.
- The Commission proposes that allowances and staffing to upper house members are raised. This is long overdue. The proposals should be implemented now.

Introduction

The House of Lords is being reformed in stages. The first of these was completed in November 1999, when the House of Lords Act removed the majority of hereditary peers from the chamber.¹ The second stage of reform was given for consideration to a Royal Commission, chaired by Lord Wakeham. The Commission reported in January 2000.² On publication, its report was roundly criticised in the press. But fairness requires a more careful consideration of its recommendations. That is the primary purpose of this briefing.

The terms of reference of the Royal Commission were as follows:

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

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

The last requirement was the most restricting. The Commission was appointed in January 1999 and held its first meeting in March. It had only 10 months in which to complete its report.

This gave the Commission very little time to do justice to the central part of their terms of reference, to link Lords reform to the new constitutional settlement. During 1999 the new constitutional settlement was only just taking shape. The devolved assemblies in Scotland and Wales were elected in May 1999, and the devolved governments took up their powers in July. Neither the assemblies nor their executives got down to business until the autumn, when Wakeham was starting to write his report. Similarly the Human Rights Act will not come into force throughout the UK until October 2000. The nature of the existing House of Lords also required the Commission to take on some other big questions, including whether the Church of England should continue to be represented in the legislature, and whether the law lords should continue to sit, or be replaced by an independent supreme court.

Even without these difficulties, the Commission had to grapple with the interlinked issues of the powers, functions, composition and legitimacy of the chamber. The Commission's terms of reference required it propose a solution which maintained the 'pre-eminent' position of the House of Commons. But the relative timidity of the House of Lords in the twentieth century has been largely due to its anomalous membership, which is not seen as legitimate, rather than its formal powers. The House of Lords Act began to change this, by removing most of the hereditary peers from the chamber in November 1999 - shortly before Wakeham

¹ The 'transitional' House of Lords which is currently sitting comprises life peers, law lords and bishops, along with 92 remaining hereditaries. The remaining hereditary peers were the result of a compromise arrangement between the parties, implemented through an amendment to the House of Lords Bill, moved by Lord Weatherill.

² *A House for the Future*, Royal Commission on the Reform of the House of Lords, Cm 4534, 2000.

reported. The impact that this will have on the behaviour of the chamber has yet to be fully seen. The Commission has proposed little change to the status quo in terms of balance between the chambers, for fear of breaching its terms of reference. But here again, experience of how the new arrangements settle down may result in a future re-evaluation of the role of the upper house.

permanent committee, comprising senior members, with each chamber represented by a group reflecting its political balance (4.9-11, 4.26-29).

These proposals are broadly welcome. In practice the House of Lords has a delaying power of around a year on bills introduced in the lower house, whilst retaining a veto on bills introduced in the upper house. Its maximum delay over 'money bills' is a month. These legislative powers are moderate in international terms.⁴ The threat to delay for a year is sufficient to ensure government takes account of the feelings of the chamber, but insufficient to create serious legislative deadlock.

In practice the full powers of the chamber have been used only rarely this century. This has been largely the result of the legitimacy problems suffered by a hereditary-dominated chamber with a strong Conservative Party bias. It was these circumstances which resulted in the agreement of the Salisbury Convention following the election of the Labour government of 1945.

However, the circumstances have now changed and the reformed upper house is likely to feel it has more legitimacy to challenge government. We are beginning to see this tendency, even the current transitional chamber. It is difficult to predict how these matters will develop, but the Salisbury Convention may prove difficult to retain. The Commission is nonetheless correct to conclude that there are practical considerations which would make it impossible to turn the convention into a more rigid agreement.

In these circumstances, the establishment of a joint committee to resolve disputes could be beneficial. Such committees operate - with varying degrees of success, dependent on their design - in many other bicameral parliaments.⁵ The Commission's suggestion that such a committee be established at the start of each session, and include senior figures, provides a constructive start. This proposal deserves further consideration, which would include drafting of detailed guidelines and procedures for the committee.

Delegated Legislation

- *The second chamber should play a stronger role in scrutiny of secondary legislation (7.17).*
- *A sifting mechanism should be established to look at*

The Commission is right to propose a stronger role here for the second chamber. This is largely technical scrutiny, out of the public

constitutional powers. The Royal Commission explains some of these obstacles, as partial justification for not extending the chamber's powers in this area. However, the Commission is also concerned that giving the upper house a veto over constitutional change would breach its remit of leaving the House of Commons as the 'pre-eminent' chamber.

However, after the recent period of rapid constitutional change there would be benefits in building stronger mechanisms to protect the new settlement, and reform of the upper house offers a means to do so. Currently a government with a majority in the House of Commons could alter the powers of the devolved assemblies, or even dissolve these institutions, without approval of the upper house or the citizens of the areas concerned. An example of similar action would be the abolition of the Greater London Council and six Metropolitan County Councils in 1986. An upper house acting as a 'constitutional watchdog' should have an important role to play in such matters. This is one example of the Commission interpreting 'pre-eminence' too broadly, in our view - constitutional bills are normally relatively rare, and on all other bills the House of Commons can eventually get its way. Furthermore, the obstacles to giving the upper house enhanced constitutional powers are surmountable. For example the Speaker of the House of Commons might designate constitutional bills (as 'money' bills are designated now); if the upper house did not approve any such bills, the government would have the option to refer their terms to a referendum. Alternatively the upper house itself might be responsible for identifying constitutional bills, and entitled to request a referendum on matters it considers constitutional.

The proposals to set up constitutional committees are welcome, whether or not the upper house is given enhanced powers. If these committees operated effectively they should result in resolution of any constitutional concerns without the need to block bills or force matters to a referendum. Given the recent period of rapid change it could be very valuable for parliament to consider the implications of all bills within the new constitutional arrangements. Such constitutional committees are common in parliaments overseas. In particular the human rights committee, which it is suggested 'looks behind' statements made by ministers that bills comply with the Hum

The Council of Ministers is the main decision and law-making body in the EU. The only way national parliaments can exert an influence is by seeking to influence the negotiating line of their national ministers. At Westminster this is done by the European Scrutiny Reserve procedure, that ministers should not enter into commitments at the Council of Ministers until the Commons have had the opportunity to scrutinise the proposal. This requires the Commons European Scrutiny Committee rapidly to sift all proposals coming up for consideration. The European Union Committee in the Lords is more selective and long term, identifying 30 to 40 items of European business each year for in-depth study by one of its six sub-committees.

This complementary approach works well, and Wakeham was right to argue that it should be strengthened by additional resources for the upper house Committee. The suggestion that Commons Ministers should regularly appear before this committee prior to and/or on their

The Peerage and the Upper House

- *Possession of a peerage should no longer be necessary for membership of the second chamber (18.2-6).*

In our first report on *Reform of the House of Lords*, we posed the question, is membership of the House of Lords a job or an honour?¹⁴ Wakeham has answered - rightly - that it is a job, and recommended that the link between membership of the upper house and the peerage should be broken. This would enable peerages to continue to be awarded in recognition of past service and merit, without creating any expectation that the holder should fulfil any parliamentary duties. It would also acknowledge the reality that many life peers treat their peerages as honorary and seldom attend parliament. With the link broken, members of the new second chamber would be appointed or elected on the basis of the contribution they could make in parliament, and not on the basis of services rendered or past distinction.

Size

- *The reformed upper house should have around 550 members (13.27).*
- *This size would not be fixed, and the Appointments Commission (responsible for choosing most of the members of the chamber) would have freedom to decide the total according to need (13.24-28).*

The House of Lords currently includes around 650 members, making it a similar size to the House of Commons. This is a considerable cu

Leaving aside the systems by which members are elected and appointed, there is a concern about the balance between elected and appointed members in each of these proposals. The proportion of elected members in the chamber would be 12%, 16% and 35% respectively under options A, B and C. The Commission acknowledged that there is considerable support for a chamber which is wholly or largely elected. However, they rejected a wholly elected chamber on a number of grounds (see paragraphs 11.3-14 of the report). One important consideration was that an elected chamber would be dominated by the parties and unlikely to include many independent members or experts. This would change the nature of the chamber and be a considerable loss. The other main justification given for rejecting an elected chamber was that the legitimacy afforded by election could result in a challenge to the 'pre-eminence' of the House of Commons, thus breaking one of the Commission's terms of reference.

The arguments made by the Commission in this section of their report are not entirely convincing. In particular their concern that an elected upper house would necessarily challenge the House of Commons is not borne out by evidence from second chambers overseas.¹⁵ This concern has, in any case, been largely dealt with by proposing that the powers of the chamber remain as they are (see above). The Commission list a number of mechanisms which could be employed to ensure that an elected chamber was not seen as more representative than the House of Commons, and would not have an opposing political majority. However, they reject these options as insufficient guarantee. These include 'staggered terms', with the membership of the chamber renewed in parts. This mechanism is commonly used in second chambers overseas. In Australia, for example, half the members of the upper house are elected every three years, ensuring that members of the lower house always have a fresher mandate and are seen as more representative (despite the upper house being elected by proportional representation). The other factor in Australia which makes the upper house less 'representative' is that each state has equal number of members, irrespective of population. This is rejected by the Commission on the basis that the populations in the UK's nations and regions vary

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directly elected members would have the necessary political weight to carry out the responsibilities we propose it should have and its decision would be more widely seen as politically legitimate'.¹⁷ They acknowledge the importance of this legitimacy. The question is whether 12%, 16%, or even 35% of members is a sufficiently 'significant proportion'.

The Commission's concern that an all-elected house would suffer from a loss of expertise, and independent members, deserves to be taken more seriously. If these elements are to be preserved in a reformed upper house this suggests inclusion of a number of appointees. However, the option which is not discussed in the Commission's report is a chamber where elected members made up half or more of the total, and appointees the rest. If the number of appointed members in the Commission's proposals were reduced this would also meet the objective of reducing the size of the chamber. Coupling the 195 elected members under their proposed option C with 100 or so appointees would meet these dual objectives.

Territorial Representation

- *Under all three of the proposed composition options, the elected members would represent the*

from the main parties, one representing the crossbenchers, and four independents. It would be required to report annually to parliament (13.2, 13.8-23).

- *The Appointments Commission will be charged with creating a chamber which is representative. It must keep the membership of the chamber under review and publish a regular statement saying what characteristics are sought in new members. It should advertise vacancies and actively solicit nominations (13.32-39).*
- *The Commission should seek to maintain a balance between the parties in the chamber which reflects the votes cast in the last general election. It must ensure that at least 20% of upper house members were not affiliated to any of the major parties. It would have complete control over all appointees, including political appointees. Although the political parties could nominate, it would not be required to accept their nominations and could select other individuals aligned to parties for membership of the chamber (Recommendation 70, 13.40-43).*
- *The Appointments Commission would have a statutory duty to ensure that at least 30% of members of the chamber were women and 30% were men, with an aim of working towards gender balance. It would be required to establish a fair representation for different ethnic groups, and for the nations and regions (Recommendation 70, 13.29-30).*

The Royal Commission have clearly thought extremely carefully about the design of the Appointments Commission, and its terms of reference, in order to ensure maximum public support for the members it appoints. In particular the complete removal of patronage from the political parties is a significant departure from current practice. This could, to a large extent, remove the perception of ‘cronism’ around the parties and political appointees in the upper house. Additionally a statutory requirement to ensure that 20% of members were not party aligned would ensure that independents continued to sit in the chamber whilst ensuring that no party had an overall majority. The tying of political balance to the outcome of an election is also welcome, as is the requirement that the chamber should be balanced in other ways. These proposals are a great improvement on the current appointments system and have the potential to greatly increase public confidence in the appointed members, thus boosting the perceived legitimacy of the chamber above that it has now.

Electoral Systems

- *The three options put forward by the Commission for composition of the chamber include not only different numbers of elected members in each case, but also different electoral systems.*
- *In option A, there would be 65 members of the chamber, chosen by what is described as ‘complementary voting’. Under this system members of the upper house would be elected on general election day. Members would represent the nations and regions, with seats allocated to the parties on the basis of total votes received for House of Commons candidates in that nation or region. There would thus be no direct election for the chamber. Instead House of Commons votes would be aggregated, and seats in the upper house allocated accordingly, from published party lists. All elected members of the chamber would be elected in one year and serve for three House of Commons terms (12.26-32).*
- *Under option B there would be 87 members elected directly, on the same day as European elections. They too would serve three terms, which in this case would be fixed at 15 years. One third of nations and regions would elect their members every five years. Votes would be cast on a separate ballot paper to that for the Euro election, but members would be elected by the same system used for that election. The Royal Commission favoured the use of ‘open’ party lists for this purpose (12.33-38).*

- *Option C was similar to option B, but with 195 elected members. In this case an election would be held in each nation and region every five years, with one third of members elected (12.39-42).*

Leaving aside the number of members elected under each system (which was discussed above) the three electoral systems proposed here have definite strengths and weaknesses.

Option A is particularly problematic. It is a highly unusual system [can we say it's not in use anywhere?]. It suffers from three main disadvantages:

- First, it breaches the tradition that electors voting in a general election are choosing between individual candidates, rather than parties. Although in most cases party is the central driver to the way votes are cast, there does remain an element of personal vote. It would therefore be inappropriate for all votes cast for a candidate to be allocated to their party. Some voters may have chosen the candidate on the basis of local service, or particular individual qualities, and would not want their votes reallocated in this way.
- Second, it confuses votes for one chamber with those for the other. This weakness is accepted in the Commission's report. A person will not necessarily want to vote for the same party in both houses of parliament, but this system denies them the opportunity to split their vote. Such split ticket voting is a feature of bicameral systems in other countries where the upper house is elected.²⁰
- Third, it uses votes cast under one electoral system (first past the post) to allocate seats under another (a list system). This faces voters with impossible choices. It is well known that many people vote tactically in Westminster elections, in order to support the candidate closest to their beliefs who has a hope of winning. However, if votes were being reallocated to elect upper house members this creates competing incentives. Effectively many voters would have to prioritise which chamber they most wanted to affect with their vote. Presumably many voters would choose the House of Commons, which would result in small parties such as the Green Party, which do not win many Commons votes, being under-represented in the upper house.

All of these difficulties stem from the proposal that votes are reallocated, rather than voters being provided with two ballot papers on general election day. If two ballot papers were to be provided, as in options B and C, these problems would not arise.

Options B and C both tie upper house elections to European election day, rather than general election day. This would have a number of consequences. On the positive side it would result in fixed terms for the upper house, and could help increase turnout for European elections. On the negative side turnout would nonetheless be likely to be lower than at a general election. Of the two options, option B has more difficulties. Under this system each nation or region would elect upper house members only every 15 years, with day and this sys60 TD0f.

Independence and Terms of Office

- *Elected members would serve for three parliamentary terms - either a fixed term of 15 years under options B and C or a variable term of three House of Commons terms (generally 10-12 years) under option A (12.14-16).*
- *These terms would be non-renewable, although members could be considered for appointment by the Appointments Commission for one additional term. Appointed members would serve 15 year terms, with the possibility of one renewal (12.7-14, 12.18-19).*
- *No member of the upper house, whether elected or appointed, would be eligible for election to the House of Commons until 10 years after their last term of office had expired. This would apply even if they did not serve their full term (12.21).*

Many of the Commission's recommendations are aimed at enhancing the independence of members of the upper house. This is stressed particularly in their argument about appointed, rather than elected, members, and also motivates many of the terms of reference proposed for the Appointments Commission. Members' independence is also intended to be enhanced by their proposed long terms of office. It is relatively common overseas for upper house members to serve longer terms of office than lower house members, although the longest such terms presently in use are nine years, in France.²¹

The Commission's proposals appear to be carefully crafted in order to protect the independence of members of the upper house. The proposal that members may only be elected for one term, with a long wait before being eligible for the House of Commons, would reduce their indebtedness to their party and encourage independent thought and action. Where members were eligible to be re-appointed this would be carried out by the Appointments Commission, who do not need the approval of the parties in political appointments. These proposals are very sensible, and echo those made by upper house reformers in the UK and overseas who seek independent parliamentarians.

The Commission's proposals that the chamber is renewed in parts is also in line with good international practice in upper houses. Under options B and C (although not option A) one third of elected members would enter the house at each election. This boosts continuity of membership, and stability. Appointed members would continue, as now, to be given seats in the house on a regular basis and the Appointments Commission would need to monitor political balance in the chamber (as well as gender, ethnic and regional balance) in making these appointments. This begs the question of why appointed members should not also enter the house at the same fixed intervals as elected members. In this way one third of the total chamber might be renewed every five years. This would make the job of rebalancing easier, reducing the risk of an ever increasing size of the chamber to achieve balance. It would also make the appointments process more transparent, as each tranche of new appointees would be well-publicised. If this model were adopted a party balance reflecting the most recent general election (or indeed the most recent upper house election) might be sought amongst each new intake, rather than in the chamber as a whole. This would minimise political fluctuations in the chamber, resulting in a relatively steady party balance.

²¹ For a comparison see M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, 2000, chapter 2.

The Law Lords

- *The law lords should continue to be ex officio members of the second chamber and carry out its judicial functions (9.6-7).*
- *They should publish a statement to clarify the line between their judicial functions and their role when participating in political debates and votes in the second chamber (9.9-10).*

The Royal Commission acknowledges that no one writing a new constitution would assign the judicial function to a second chamber. But it ducked the opportunity, in re-writing this part of our constitution, to separate the judiciary from the legislature. They received weighty submissions urging them to do so, from JUSTICE and other legal bodies. But they preferred to defer on the question of whether there should be a separate Supreme Court to another Royal Commission or similar inquiry, and not to settle it as a by-product of reform of the House of Lords.

In the interim the Commission saw no reason why the law lords should not remain in the second chamber. This position may not be tenable for long. Pressures are building up on the law lords from three directions. Devolution will draw them into high profile political disputes between the UK and devolved governments; the Human Rights Act will require them to adjudicate on controversial social and moral issues; and Lords reform is also dragging them into the spotlight. The evidence to Wakeham has exposed how often the law lords intervene in debates which are politically co

- *Five places should be representative of other faith communities (15.15-17).*

This is another issue on which the Commission should have taken a firmer constitutional stand. The presence of the Bishops in parliament is a hangover from the middle ages, like the hereditary peers. Like the hereditary peers, they sat as major landowners, not for their advice on matters spiritual. Other European parliaments also had representatives of the clergy, as one of the Estates of the Realm (eg in France, Ireland, Spain and Sweden); but that representation has long since disappeared with the modernisation of their constitutions.²² The UK is the only Western democracy left in which the church is still represented in parliament.

[RH to complete - note the analysis at para A5 in the appendix of the report (p. 198), saying only 27% of those responding to the Commission's own questionnaires favoured maintaining or developing the role in the house of organised religion. 53% wanted this role reduced!]

Allowances and Other Resources

- *In order to enable the broad representation in the chamber which is sought by the Commission, 'the financial arrangements which apply to members of the second chamber should make regular attendance economically viable for people who live outside the South East of England and who do not have a separate source of income' (Recommendation 119).*
- *However, payment should continue to be through allowances based on daily attendance, rather than through a salary, in order that members may continue to attend on a part time basis if they wish. The precise level of payment would be referred to the Senior Salaries Review Board, with a presumption that a full time member of the upper house would earn less than an MP's salary (currently £47,008 per year) (17.3-11).*
- *More office space and secretarial support should be made available to upper house members, with most of this secretarial support organised on a pooled basis, rather than to individual members. This is intended to prevent upper house members taking on constituency caseloads (17.14-16).*

These proposals are very welcome. If the second chamber is to become more representative it is essential that it is better resourced. This is also appropriate to the general process of turning it into a modern and efficient parliamentary chamber. It is very appropriate that the Commission have sought to limit upper house members' involvement in constituency work, which is an increasingly draining activity on MPs' time and resources. This restriction has been used to limit not only members' secretarial allowances, but also their own incomes for parliamentary work. If upper house members' incomes are kept below those of MPs it is nonetheless important that they are not significantly lower. This would only tend to make the upper house appear junior, and limit the calibre of members who are prepared to sit within it.²³

²² See M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, 2000, chapter 2.

²³ It is relatively common overseas for upper house members to receive identical salaries to lower house members. See M. Russell, *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, 2000, chapter 5.

Recommendations which could be Implemented without Legislation

When the Royal Commission's report was published in January 2000 we gave it only two cheers. Despite its title, it is not mainly about a 'House for the Future'. It does not contain a blueprint for a fully reformed House of Lords, because the Commission deliberately did not raise their sights that far. Most of the Wakeham report is about further modernisation in the present: further steps in the process of incremental reform. Seen in this light there are a lot of useful recommendations in Wakeham, which should not be abandoned just because the report as a whole was roundly criticised in the press.

Most of the recommendations constitute a modernising agenda for the House of Lords which could be achieved without legislation. It is an agenda as much for the Lords as it is for the government, and many of the proposals should gain cross-party support. Wakeham's procedural changes would make the Lords a more efficient, effective and rewarding place to work in. Some changes would also help to make it more respected outside, at a time when the legitimacy of the transitional chamber is already being called into question.

In this final section we therefore examine those proposals in the report which could be implemented quickly, without legislation. Given that wholesale reform will not happen until after the next general election, there are many valuable proposals which could be implemented straight away. This approach would also enable many of the proposals to be tested out, allowing adjustments to be made if necessary when these arrangements are put on a statutory basis.

The Appointments Commission

The government announced in 1999 its intention to set up an independent Appointments Commission to make appointments to the transitional House of Lords. Places on this Commission have been advertised, and it is expected to be in place by April 2000.²⁴ However, the role of this Commission is very limited. It would have responsibility for selecting crossbench members and vetting political members, but have no control over the choice of political members, the balance between parties or the total number of appointments made.

The most significant proposal which could be implemented without legislation would therefore be the establishment of a 'Wakeham style' Appointments Commission. The proposals in the report are intended to boost public confidence in appointments to the chamber, and have been carefully designed for this purpose. There is no reason why the government should not implement these arrangements, on a non-statutory basis, for the transitional house.

This would give added responsibility to the new Appointments Commission for:

- Controlling the political balance between the parties in the chamber, on the basis of votes cast at the last general election, and the overall size of the chamber. Both of these are currently under the control of the Prime Minister.

²⁴ *House of Lords Hansard*, 31 January 2000, column 9.

- Ensuring that 20% of upper house members are independent, at least 30% are women, and that the chamber includes a fair ethnic and regional mix.
- Making political party appointments, as well as independent appointments, on the basis of nominations. This would take the power of patronage away from the Prime Minister and other party leaders.

Early implementation of these proposals would demonstrate the government's commitment to transparent public appointments, and provide an opportunity to test whether a second chamber appointed on this basis could gain public support.

New Committees

The Royal Commission proposes the establishment of four new committees, all of which would potentially be of use straight away. These committees would be:

- **Constitutional Committee**, to review the constitutional implications of all new legislation. The Commission proposes that this be established on a statutory basis, but this could be preceded by a non-statutory committee.
- **Human Rights Committee**. This would review ministerial statements of compatibility which say whether each new bill complies with the Human Rights Act. Such statements are already being issued, so a committee carrying out this task could be put to work as soon as possible. The committee could also monitor the impact of the Act.
- **Devolution Committee**. [Robert can you say something about this? I'm not sure I understand what the Royal Commission is proposing]
- **Treaties Committee**. The Commission proposes a new select committee to scrutinise international treaties which the government intends to enter into. This is unrelated to the membership of the new house and could be established straight away.

Establishment of these committees should be considered by the House of Lords Liaison Committee as soon as possible, and could be established a a motion of the House. The Commission's proposal that upper house committees meet sometimes outside London could also be implemented now, on an experimental basis.

Joint Committee to Resolve Disputes

The Commission proposes that options are considered for establishment of a joint parliamentary committee to resolve disputes between the chambers over legislation. Given that such disputes are already arising in the transitional chamber, such a committee might be established now as a means of trying to resolve some of these differences in a less adversarial way. Without a statutory basis the committee would have no constitutional powers, but it could try to hammer out compromise proposals which might be accepted by both chambers. This could act as a testing ground for the Commission's proposal. Further consideration would need to be given to the detailed operation and membership of the committee.

Access for Commons Ministers to the Upper House

The Commission proposes that Commons ministers should have access to the upper house to answer questions and make statements. This would improve the access of upper house members to government information. Such ministers' exclusion from the House of Lords is a matter of convention only. If the House of Lords wanted to facilitate access for Commons ministers it could approve this explicitly through a change to standing orders. The Procedure Committee might consider proposing a motion to the House to this effect. If this was done, the Commons should also consider giving equivalent access to Lords ministers. The success of these changes would of course depend on the co-operation of government ministers with the new arrangements.

Law Lords

[RH to recommend that they draw up their guidelines on parliamentary behaviour now?]

Religious Representation

[RH to say that Appointments Commission could be asked to include other religious faiths now?]

Delegated legislation

The Commission state their proposed change over the powers of the chamber would require legislation (an amendment to the Statutory Instruments Act 1946). Pending such legislation the House could use its existing powers as a suspensory veto, to delay rather than to block. This could be achieved by adjourning for three months the debate on a motion to approve or annul a Statutory Instrument, enabling the government and House of Commons to consider the objections raised (see para. 7.34). [RH to check - and say something about resources]

European Matters. The Procedure

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The Constitution Unit and the House of Lords

The Constitution Unit has carried out a range of research into the House of Lords and its reform, and published a number of briefings in this area. There is also a Constitution Unit book, by Meg Russell, published by Oxford University Press. The Constitution Unit acted as advisors to the Royal Commission, providing a number of commissioned briefings, some of which were subsequently published. These publications are listed below:

- *Reforming the House of Lords: Lessons from Overseas*, Oxford University Press, January 2000.
- *Representing the Nations and Regions in a New Upper House*, July 1999 (£5).
- *Second Chambers Overseas: A Summary*, May 1999 (£8).
- *Second Chambers: Resolving Deadlock*, May 1999 (£5).
- *Second Chambers as Constitutional Guardians and Protectors of Human Rights*, May 1999 (£5).
- *Reform of the House of Lords: The Role of the Law Lords*, May 1999 (£5).
- *Reform of the House of Lords: The Role of the Bishops*, May 1999 (£5).
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- *A Directly Elected Upper House: Lessons from Italy and Australia*, May 1999 (£5).
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- *A Vocational Upper House?: Lessons from Ireland*, February 1999 (£5).
- *An Appointed Upper House: Lessons from Canada*, November 1998 (£5).
- *Reforming the Lords: A Step by Step Guide*, January 1998 (£5).
- *Reform of the House of Lords*, April 1996 (£15).

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