CHAPTER 18

The House of Lords

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> "The second chamber does not legitimise Government itself. Its role, rather, is one of a subordinate revising and deliberative chamber"
>
> HM Government, *House of Lords: Completing the Reform* (2001: 18)

Learning objectives

- To describe the nature, development and role of the House of Lords.
- To identify the extent and consequences of fundamental changes made to the House in recent years.
- To assess proposals for further change to the second chamber.

Introduction

The House of Lords serves as the second chamber in a bicameral legislature. The bicameral system that the United Kingdom now enjoys has been described as one of asymmetrical bicameralism: in other words, there are two chambers, but one is politically inferior to the other. The role of the second chamber in relation to the first moved in the twentieth century from being co-equal to subordinate. As a subordinate chamber, it has carried out tasks that have been recognised as useful to the political system, but it has never fully escaped criticism for the nature of its composition. It was variously reformed at different times in the twentieth century, the most dramatic change coming at the end of the century. Debate continues as to what form the second chamber should take in the twenty-first century.

The House of Lords is remarkable for its longevity. What makes this longevity all the more remarkable are two features peculiar to the House. The first is that it has never been an elected chamber. The second is that, until 1999, the membership of the House was based principally on the hereditary principle. The bulk of the membership comprised hereditary peers. Only at the end of the twentieth century were most of the hereditary peers removed. The removal of the hereditary peers was not accompanied by a move to an elected second chamber. Whether the United Kingdom is to have an elected or unelected second chamber remains a matter of dispute. It perhaps says something for the work of the House of Lords

that the contemporary debate revolves around what form the second chamber should take rather than whether or not the United Kingdom should have a second chamber.

What, then, is the history of the House of Lords? How has it changed over the past century? What tasks does it currently fulfil? And what shape is it likely to take in the future?

History

The House of Lords is generally viewed by historians as having its origins in the Anglo-Saxon *Witenagemot* and more especially its Norman successor, the *Curia Regis* (Court of the King). Two features of the King's *Curia* of the twelfth and thirteenth centuries were to remain central characteristics of the House of Lords. One was the basic composition, comprising the lords spiritual and the lords temporal. At the time of Magna Carta, the *Curia* comprised the leading prelates of the kingdom (archbishops, bishops and abbots) and the earls and chief barons. The main change, historically, was to be the shift in balance between the two: the churchmen – the lords spiritual – moved from being a dominant to being a small part of the House. The other significant feature was the basis on which members were summoned. The King's tenants-in-chief attended the court because of their position. Various minor barons were summoned because the King wished them to attend. 'From the beginning the will of the king was an element in determining its make up' (White 1908: 299). If a baron regularly received a summons to court, the presumption grew that the summons would be issued to his heir. A body thus developed that peers attended on the basis of a strictly hereditary dignity without reference to tenure. The result was to be a House of Lords based on the principle of heredity, with writs of summons being personal to the recipients. Members were not summoned to speak on behalf of some other individuals or bodies. Any notion of representativeness was squeezed out. Even the lords spiritual – who served by reason of their position in the established Church – were summoned to take part in a personal capacity.

The lack of any representative capacity led to the House occupying a position of political – and later legal – inferiority to the House of Commons. As early as the fifteenth century, the privilege of initiating measures of taxation was conceded to the Lower House. The most significant shift, though, took place in the nineteenth century. As we have seen (Chapters 15 and 16), the effect of the Reform Acts was to consign the Lords to a recognisably subordinate role to that of the Commons, although not until the passage of the Parliament Act of 1911 was that role confirmed by statute. Under the terms of the Act, the House could delay a non-money bill for no more than two sessions. Money bills (those dealing exclusively with money, and so certified by the Speaker) were to become law one month after leaving the Commons whether approved by the House of Lords or not. Bills to prolong the life of a parliament, along with delegated legislation and bills originating in the House of Lords, were excluded from the provisions of the Act. The two-session veto over non-money bills was reduced to one session by the Parliament Act of 1949.

The subordinate position of the House of Lords to the House of Commons was thus established. However, the House remained a subject of political controversy. The hereditary principle was attacked by those who saw no reason for membership to be determined by accident of privileged birth. It was attacked as well because the bulk of the membership tended to favour the Conservative cause. Ever since the eighteenth century, when Prime Minister William Pitt the Younger created peers on an unprecedented scale, the Conservatives enjoyed a political ascendancy (if not always an absolute majority) in the House. In other words, occupying a subordinate position did not render the House acceptable: the *composition* of the House, however much it was subordinated to the Commons, was unacceptable. There were some attempts in the period of Conservative government from 1951 to 1964 to render it more acceptable, not by removing hereditary peers or destroying the Conservative predominance but rather by supplementing the existing membership with a new type of membership. The Life Peerages Act 1958 made provision for people to be made members for life of the House of Lords, their titles – and the entitlement to a seat in the House of Lords – to cease upon their death. This was designed to strengthen the House by allowing people who objected to the hereditary principle to become members. Following the 1958 Act, few hereditary peerages were created. None was created under Labour governments, and only one Conservative Prime Minister, Margaret Thatcher, nominated any (and then only three – Harold Macmillan, who became the Earl of Stockton; George Thomas, former Speaker of the House of Commons; and William Whitelaw, her Deputy Prime Minister). The 1963 Peerages Act made provision for hereditary peers who wished to do so to disclaim their titles. Prior to 1999 these were the most important measures to affect the membership of the House. Although both measures – and especially the 1958 Act – had significant consequences, pressure continued for more radical reform. In 1999, acting on a commitment embodied in the Labour manifesto in the 1997 General Election, the Labour Government achieved passage of the House of Lords Act. This removed from membership of the House all but 92 of the hereditary members. The effect was to transform the House from one composed predominantly of hereditary peers to one composed overwhelmingly of life peers. However, the removal of the hereditary peers was seen as but one stage in a process of reform. The House of Lords created by their removal was deemed to be an interim House, to remain in place while proposals for a second stage of reform were considered. The issue of what should constitute the second stage of reform has proved highly contentious.

Membership

Until the passage of the House of Lords Act, which removed most hereditary peers from membership, the House of Lords had more than 1,000 members, making it the largest regularly sitting legislative chamber in the world. Its size was hardly surprising given the number of peers created over the centuries by each succeeding monarch, although the largest increase was in the twentieth century. In 1906 the House had a membership of 602. In January 1999 it had 1,296. Of those, 759 were hereditary peers. (The figure includes one prince and three dukes of the blood royal.) The remaining members comprised 485 life peers, 12 peers created under the Appellate Jurisdiction Act 1876 (the law lords, appointed to carry out the judicial business of the House) and 26 lords spiritual (the two archbishops and 24 senior bishops of the Church of England). With the removal of all but 92 of the hereditary peers, the House remains a relatively large one. In the immediate wake of the removal of the hereditary peers, the House had 666 members. With new creations and deaths, the figure has fluctuated since, but – as we shall see – with a marked upward trajectory. By June 2017, there were formally 831 members. The figure, though, includes 23 peers on leave of absence and 8 who were disqualified while holding senior judicial office. The serving membership was thus 800 (Table 18.1). Of these 800, 685 were life peers created under the provisions of the 1958 Act.

The membership of the House has thus been affected dramatically by the 1958 Life Peerages Act and the 1999 House of Lords Act. In many respects, the former made possible the latter, creating a new pool of members who could serve once hereditary peers were removed. Indeed, the creation of life peerages under the 1958 Act had a dramatic effect on the House in terms both of composition and activity. The impact of the 1999 Act will be considered in greater detail later.

Table 18.1 Composition of the House of Lords, 1 June 2017

By party				
Party	**Life peers**	**Hereditary**	**Bishops**	**Total**
Conservative	204	49	0	253
Labour	197	4	0	201
Liberal Democrat	98	4	0	102
Cross-bench	143	32	0	175
Bishops	0	0	25	25*
Other[1]	43	1	0	44
Total	685	90	25	800

Notes: *1 vacancy.

NB: Excludes 23 Members who are on leave of absence and 8 disqualified as judges.

[1] These comprise non-affiliated peers and peers who sit as members of other political parties, such as Democratic Unionists and UKIP.

Source: www.parliament.uk

Composition

In terms of composition, the 1958 Act made possible a substantial increase in the number of Labour members. Previously, Labour members had been in a notable minority. In 1924, when Labour first formed a minority government, the party had only one supporter in the Upper House. The position changed only gradually. In 1945 there were 18 Labour peers. Forty-four Labour peers were created in the period of Labour government from 1945 to 1951, but their successors did not always support the Labour Party. By 1999 there were only 17 hereditary peers sitting on the Labour benches. Life peerages enabled Labour's ranks to be swelled over time. Prominent Labour supporters who objected to hereditary peerages were prepared to accept life peerages, so various former ministers, ex-MPs, trade union leaders and other public figures were elevated to the House of Lords. At the beginning of 1999 there were more than 150 life peers sitting on the Labour benches. Apart from former ministers and MPs, they included figures such as the broadcaster Melvyn Bragg; film producer David Puttnam; crime writer Ruth Rendell; and TV presenter, professor and doctor Robert Winston. Further creations helped bring the number above 200, and in the 2005–6 session, the party became the largest single party in the House. In the 2010–5 Parliament it returned to being the second largest after a substantial creation of Conservative peers by Prime Minister David Cameron (2010–6) and the loss of some peers through death and retirement. In June 2017 (see Table 18.1), there were 201 Labour peers as against 253 Conservatives.

The creation of life peers from 1958 onwards served to lessen the party imbalance in the House. In 1945 Conservative peers accounted for 50.4 per cent of the membership. In 1998 the figure was 38.4 per cent (Baldwin 1999). Before 1999 the second largest category in the House comprised those peers who choose to sit independently of party ranks and occupy the cross-benches in the House. At the beginning of 1999 – that is, in the pre-reform House – the state of the parties was Conservative 473, Labour 168, Liberal Democrats 67 and cross-benchers 322. This left in excess of 250 other peers who did not align themselves with any of these groupings. The effect of the removal of most hereditary peers in 1999 was to create greater equality between the two main parties, leaving – as shown in Table 18.1 – the balance of power being held by the cross-benchers and the Liberal Democrats.

The creation of life peers drawn from modest backgrounds has also served to affect the social profile of the membership. Hereditary peers were typically drawn from the cream of upper-class society, including those who owned great estates. Life peers were drawn from a more diverse social background, ranging from some former miners who had served in the House of Commons to leading figures in business. However, even with the influx of life peers, the membership remained, and remains, socially atypical. Life peerages are normally conferred on those who have achieved some particular distinction in society, be it social, cultural, sporting, economic or political. By the time the recipients have achieved such a distinction, they are, by definition, atypical. There was therefore little chance of the House becoming socially typical. Members of the House are drawn notably from backgrounds in the law, the civil service and the teaching profession, these three categories accounting for nearly 40 per cent of the membership (Criddle et al. 2005: 34–5). The next largest category – accounting for just nearly 5 per cent of the membership – is that of trade union officials. The House is also atypical in terms of age and gender. Given that peerages tend to be given to those who have already achieved something in life and that they entail service for life, it is not surprising that the average age of the membership is 69. It is rare for people to be made life peers while in their 20s or 30s. Television mogul Lord Alli (born 1964) was elevated to the peerage in 1998 at the age of 34. Lawyer Baroness Warsi (b. 1971) became a peer in 2007 at the age of 36. Social entrepreneur Nat Wei was made a life peer in 2010 at the age of 33. The hereditary peerage produced some young peers, succeeding their fathers at an early age, but they were small in number and largely disappeared as a result of the House of Lords Act, though not entirely. One hereditary peer, Lord Freyberg (born 1970), entered the House at the age of 23. Women, who were first admitted to the House under the provisions of the 1958 Life Peerages Act, also constitute a minority of the membership, but the number is a growing one. In 1990, there were 80 women in the House, constituting 7 per cent of the membership. The removal of a large number of – overwhelmingly male – hereditary peers and the creation of more women life peers has meant that the number, and proportion, of women peers has increased notably. By June 2017 there were 207 women peers, constituting just over 25 per cent of the membership. Of these, all bar one held life peerages. Some peers are disabled, a number, such as former Paralympian Baroness Grey-Thompson, being wheelchair-bound. Three peers are blind, including another former Paralympian Lord Holmes of Richmond. The first non-white peer (West Indian cricketer Leary Constantine) entered the House in 1969. Various Black and Asian peers have since come to the fore as a result of holding or having held leading government posts. Baroness Amos became the first black woman to sit in the Cabinet. Baroness Warsi became the first Muslim to join the Cabinet. There are also now several openly gay peers in all three main parties and on the cross-benches. They include Lord Alli; executive director of the Telegraph Media Group Lord Black of Brentwood; former senior police officer Lord Paddick; former Cabinet ministers Lord Mandelson and Lord Smith of Finsbury; and businessman Lord Browne of Madingley.

There has been another consequence of life peerages in terms of the membership of the House. It has brought into the House a body of individuals who are frequently expert in a particular area or have experience in a particular field. This claim is not exclusive to life peers – some hereditary peers are notable for their expertise or experience in particular fields – but it is associated predominantly with them. This has led to claims that, when the House debates a subject, however arcane it may be, there is usually one or more experts in the House to discuss it (Baldwin 1985). Thus, for example, in a short debate held on 9 July 2012 on the long-term strategy for the arts and culture sector in the UK, those taking part included:

- Lord Hall of Birkenhead, Chief Executive of the Royal Opera House (later Director-General of the BBC);
- Lord Lloyd-Webber (Andrew Lloyd-Webber), the theatre impresario;
- Baroness Hooper, previously a governor of the Royal Ballet;
- Baroness Young of Hornsey, professor of cultural studies (and former actress);
- Baroness McIntosh of Hudnall, formerly chief executive of the Royal National Theatre;
- Baroness Bonham-Carter of Yarnbury, previously a BBC producer; and
- Baroness Benjamin (Floella Benjamin), actress and TV presenter.

The same week the House was discussing the Justice and Security Bill. Among peers taking part in considering amendments to the Bill were those who had held the posts of Lord Chief Justice (Lord Woolf QC), Head of MI5 (Baroness Maningham-Buller), Lord Chancellor (Lord Falconer of Thoroton QC), Defence Secretary (Lord King of Bridgwater), the Government's independent reviewer of terrorism legislation (Lord Carlile of Berriew QC) and deputy high court judge (Lord Thomas of Gresford QC), as well as other leading lawyers such as David Pannick QC, Lord Faulks QC, and human rights lawyer Lord Lester of Herne Hill QC.

This claim to expertise in many fields is often contrasted with membership of the House of Commons, where the career politician – expert in the practice of politics – dominates. The body of expertise and experience serves, as we shall see, to bolster the capacity of the House to fulfil a number of its functions.

Figure 18.1 Chamber of the House of Lords

Kirsty Wigglesworth/AFP/Getty Images

Activity

The creation of life peers also had a dramatic effect on the activity of the House. In the 1950s the House met at a leisurely pace and was poorly attended. Peers have never been paid a salary, and many members, like the minor barons in the thirteenth century, found attending to be a chore, sometimes an expensive one: the practice, as in the thirteenth century, was to stay away. The House rarely met for more than three days a week, and each sitting was usually no more than three or four hours in length. For most of the decade, the average daily attendance did not reach three figures. Little interest was shown in its activities by most of its own members; not surprisingly, there was little interest shown by those outside the House.

This was to change significantly in each succeeding decade (see Table 18.2). Life peers were disproportionately active. Although they constituted a minority of the House, they came to constitute a majority of the most active members of the House. The effect of the increasing numbers of life peers was apparent in the attendance of members. Peers attended in ever-greater numbers and the House sat for longer. Late-night sittings, virtually unknown in the 1950s and for much of the 1960s, became regular features. In the 1980s and 1990s the average daily sitting was six or seven hours. By the end of the 1980s more than 800 peers – two-thirds of the membership – attended one or more sittings each year and, of those, more than 500 contributed to debate. By the time of the House of Lords Act in 1999, the House was boasting a better attendance in the chamber than the House of Commons. The effect of the 1999 Act was to result in a House in which the active members dominated. Although the membership halved in 1999, the daily attendance hardly changed. While

Table 18.2 House of Lords sittings and daily attendance

Session	Number of days	Average daily attendance
1960–61	125	142
1961–62	115	143
1962–63	127	140
1998–99	154	446
1999–00	177	352
2000–01[1]	76	347
2001–02[2]	200	370
2002–03	174	362
2003–04	157	368
2004–05[1]	63	388
2005–06[2]	206	403
2006–07	142	415
2007–08	164	413
2008–09	134	400
2009–10[1]	68	388
2010–12[2]	293	475
2012–13	137	484
2013–14	149	497
2014–15	126	483
2015–16	149	497

Notes: [1] Short session.
[2] Long session.

Source: www.parliament.uk

the average daily attendance figure for 1992–3 constituted just under one-third of the membership, that for the post-reform 2015–6 session constitutes more than 60 per cent of the membership. This is despite the fact that many members had full-time posts outside the House. The House now witnesses an average daily attendance that is close to 500 (Table 18.2).

One other consequence of the more active House was that the number of votes increased. They were few and far between in the 1950s, about 10 to 20 a year. By the 1980s and 1990s, the figure was usually closer to 200. The political composition of the House meant that a Labour government was vulnerable to defeat. In the period of Labour government from 1974 to 1979, the government suffered 362 defeats at the hands of the House of Lords. However, Conservative governments were not immune. The preponderance of Conservative peers did not always translate into a majority for a Conservative government. In the period of Conservative government from 1979 to 1997, ministers suffered just over 250 defeats in the House. The government was vulnerable to a combination of opposition parties, the cross-benchers and, on occasion, some of its own supporters. The Labour Government elected in 1997 was vulnerable to defeat, at least for the first two sessions, because of the large number of Conservative peers. With the removal of most hereditary peers in 1999, it could not be defeated by the Conservatives alone but was vulnerable to defeat because of a combination of opposition parties or of the Opposition and cross-benchers or of all the opposition parties and a preponderance of crossbenchers. In its 13 years in power (1997–2010), the Labour Government suffered 528 defeats; of these, 458 took place in the post-1999 reformed House. In the 2010–5 Parliament, the combination of the Conservatives and Liberal Democrats in Government provided something of a buffer against defeats but despite that still suffered a total of 100 defeats. The Conservative Government in the two-session 2015–7 Parliament suffered a total of 98 defeats.

The House also became more visible to the outside world. In 1985 television cameras were allowed to broadcast proceedings. There was a four-year gap before the televising

BOX 18.1

The atmosphere in the House

The House of Lords is stunning in its grandeur. For some, it is awe-inspiring; for others, it is suffocating. The House combines crown, Church and a chamber of the legislature. The magnificent throne dominates the chamber. On entering the chamber, a peer bows to the cloth of estate – just above the throne – as a mark of respect. (Unlike the Commons, there is no bowing when leaving the chamber.) Look up and you see the magnificent stained glass windows. Look down and you see the red benches of a debating chamber. The House combines symbolism with the efficiency of a working body. From the bar of the House you see the throne: lower your eye-line and you see the laptop computer on the table of the House. The clerks sit in their wigs and gowns, using the laptop as well as controlling the button for resetting the digital clocks in the chamber.

On Mondays to Thursdays the benches are usually packed to overflowing for the start of business. The combination of increasing attendance and a relatively small chamber means that peers often have to get in early to get their preferred spot on the benches. (Unlike the Commons, one cannot reserve a seat in advance.) The Lord Speaker's procession mirrors that of the Speaker of the House of Commons. Peers bow as the mace passes. Once the Lord Speaker has taken his place on the Woolsack, prayers are said. Once these are over, members of the public are admitted to the gallery, and other peers come into the chamber. At the start of Question Time, the Clerk of the Parliaments, sitting bewigged at the table, rises and announces the name of the peer who has the first question on the Order Paper. The peer rises and declares, 'I beg leave to ask the question standing in my name on the Order Paper'. The answering minister rises to the despatch box and reads out a prepared response. The peer rises to put a supplementary, followed later by others. If two peers rise at the same time, one is expected to give way. Otherwise, as a self-regulating chamber, it is members who decide – usually by calling out the name of the peer they wish to hear, or else by shouting 'this side', indicating that the last supplementary was put by someone on the other side of the House. If neither gives way, the Leader of the House usually intervenes, but the Leader can be overruled by the House. Normally, but not always, good manners prevail.

Peers take a lively interest in questions. There are approximately seven or eight minutes available for each question. If time on a question goes beyond that, peers shout 'next question'. Ministers need to be well briefed. It is usually obvious when ministers are out of their depth or have been caught out. Question Time can be educational. The topics are diverse and usually there is knowledge on the part of questioners and ministers. If a minister runs into trouble, the fact that the chamber is packed adds to the tension. Question Time can also be funny. When a minister, questioned about the use of mobile phones on aeroplanes, faced a supplementary about the perils of mobile telephones 'on terra firma', he did not hear the full supplementary and had to ask a colleague. Realising he had taken some time to return to the despatch box, he rose and said: 'I am sorry, My Lords, I thought terra firma might be some obscure airline!' On another occasion, a question about the safety of a female chimpanzee that had been mistreated received a very detailed answer, which included the facts – as I recall – that the chimp was now in a sanctuary with other chimps, that the group was led by a male of a certain age and that the chimp was enjoying herself. Whereupon the redoubtable Baroness Trumpington got to her feet and declared: 'My Lords, she is better off than I am!' Several years later, when Conservative Lord King of Bridgwater appeared to suggest that some peers, like Lady Trumpington, sitting beside him, may be beyond their prime, he received a two-fingered response from the Baroness, a gesture that went viral on the internet.

The House of Lords is a remarkably egalitarian institution: members are peers in the true sense. The atmosphere of the House can be tense, sometimes exciting – the results of votes are often uncertain – and occasionally a little rough. Maiden speeches, given priority in debates and heard in respectful silence (peers cannot enter or leave the chamber while they are taking place), can be nerve-wracking, even for the most experienced of public speakers. Most of the time the House has the feel of what it is: a working body, engaged in debate and legislative scrutiny. The emphasis is on constructive debate and revision. Partisan shouting matches are rare. At times, especially at the committee stage of bills, attendance can be small, the main debate taking place between the two front benches, but the effect of the probing from the opposition benches ensures that ministers have to offer informed responses. Notes frequently pass from civil servants in the officials' box to the minister at the despatch box. The quality of ministers can be very good. Ministers who are well regarded and who take the House seriously can rely on the occasional indulgence of the House if they make a slip. The responsibilities of some ministers mean that they spend a great deal of time in the chamber.

The only way to appreciate the atmosphere, and the productive nature of the House, is to be there. One certainly cannot glean it from television – the House is squeezed out by the Commons – or from the official report. *Hansard* is good at tidying up speeches, correcting grammar and titles. The tidying-up can also have the effect of sanitising proceedings. During the passage of the Access to Justice Bill, Conservative Baroness Wilcox – a champion of consumers – moved an amendment dealing with consumer affairs. The Lord Chancellor, to the delight – and obvious surprise – of Lady Wilcox, promptly accepted the import of the amendment. Lady Wilcox rose and exclaimed 'Gosh. Thanks'. This appeared in *Hansard* as 'I thank the noble and learned Lord. He has pleased me very much today'! When the House collapses in laughter – as it did after the minister's terra firma remark or Baroness Trumpington's intervention – this either appears in *Hansard* as 'Noble Lords: Oh!' or else is ignored. No, one definitely has to be there to appreciate the atmosphere.

of Commons proceedings began: in those four years, the House of Lords enjoyed exclusive television coverage. In the 1990s the House was also ahead of the House of Commons in appointing an information officer and seeking to ensure better public understanding of its role and activities. The Information Office of the House has been highly active in disseminating information about the work of the House, generating booklets and information packs for which the House of Commons has no equivalent.

The House differs significantly, then, from the Commons in its size and composition. There is also a difference in terms of remuneration. Whereas MPs are salaried and can claim for expenses, peers are not salaried and cannot claim expenses. Peers can claim a daily attendance allowance (of either £300 or £150) – they have to be present in the House in order to claim – as well as travel costs. Any expenses (such as hotel, secretarial and research costs) have to be met out of the attendance allowance.

Procedures

The two Houses also differ notably in their procedures. The presiding officer of the House of Lords, who sits on the Woolsack (or at the Table of the House when in committee) has no powers to call peers to speak or to enforce order. The maintenance of the rules of order is the responsibility of the House itself, although peers usually look to the Leader of the House to give a lead. Peers wishing to speak in a set-piece debate, such as a second reading debate, submit their names in advance (they can now do so online), and a list of speakers is circulated shortly prior to the debate. (The list of those who have signed up for debate is public and can be viewed online ahead of debates.) Peers then rise to speak in the order on the list. At other times, as in Question Time, if two peers rise at the same time, one is expected to give way. (If neither does so, other peers make clear their preference as to who should speak by shouting out the name of the person they wish to hear.) If a speaker strays from what is permissible, other peers shout 'Order'. If a speaker goes on for too long, it is always open to another peer to rise and call attention to the fact, a task normally undertaken by the government whip on duty. In extreme cases, it is possible to move the motion 'That the noble peer be no longer heard', but this is a device rarely employed. (The motion itself is debatable.) The Lords remains a more chamber-oriented institution than the Commons, although – as we shall see – it is making more use of committees than before. Although the House votes more frequently than it used to, the number of divisions in the Lords is less than in the Commons. This, in part, reflects the recognition by peers of the political predominance of the elected chamber. Peers are often reluctant to press issues to a vote and rarely do so on the principle of a measure. By virtue of an agreement reached between the two party leaders in the Lords in 1945, the House does not divide on the second reading of any bill promised in the government's election manifesto. This is known as the Salisbury Convention. In practice, the House will not normally reject, or even divide, on any bill appearing in the government's programme for the session.

There are also two other features where it differs from the Commons and which enhance its capacity to affect the outcome of legislation. First, the House discusses all amendments tabled to bills. In the Commons the chair selects only a limited number for debate. Second, there are no timetable (guillotine) motions. Debate continues so long as peers wish to speak. There are also considerable opportunities for peers to raise issues in the House. Some debates are time-limited (although not the committee and report stages of bills), and a 15-minute time limit operates for backbench speeches in set-piece debates. Peers keep their speeches even shorter if many of them sign up to speak in a time-limited debate. Time limits force peers to think about what they want to say and ensure that they focus on the main points. The results tend to be a series of short, informed and often highly informative speeches.

Functions

The debate about reform of the House of Lords has focused largely, though not wholly, on its composition. The functions of the House – the tasks that it carries out – have not generated as much controversy. There has been a wide body of agreement that the functions it fulfilled in the twentieth century (see Norton 2017: Chapter 1), and continues to fulfil in the twenty-first, are appropriate to a second chamber. As we shall see, this is not a view held by all critics of House of Lords. Nonetheless, the view has tended to predominate among those engaged in the debate, including the Government of the day. The functions are broadly similar to those of the Commons but not as extensive. The extent to which they differ derives from the fact that politically the House is no longer co-equal with the Commons.

Legitimisation

The House fulfils the functions of both manifest and latent legitimisation, but it does so on a modest scale. It is called upon to give the seal of approval to bills, but if it fails to give that approval, it can be overridden later by the House of Commons under the provisions of the Parliament Acts. Only in very rare circumstances – as in the case of a bill to lengthen the life of a parliament, secondary legislation or (somewhat more significantly) bills originating in the Lords – is its veto absolute. By virtue of being one of the two chambers of Parliament and by fulfilling the functions it does effectively, the House may have a limited claim to fulfilling a function of latent legitimisation. It is a long-established part of the nation's constitutional arrangements. However, such a claim is offset by the House having no claim to being a representative assembly – neither speaking for particular bodies in society nor being socially typical – and by its limited legislative authority. A claim to traditional authority has been superseded by a claim to specialised knowledge, the House being able to draw on experience and expertise in considering the measures before it, but that 'technocratic' legitimacy is not on a par with the legitimacy of the elected chamber.

Recruitment

The House provides some of the personnel of government. Ministers are drawn from Parliament and, by convention, predominantly now from the elected House.

The Prime Minister appoints a number of ministers from the Upper House primarily for political and managerial reasons. Although the government is normally assured of getting its bills through the House, it is not necessarily guaranteed getting them through in the form it wants them. It is therefore prudent to have ministers in the Lords in order to explain bills and to marshal support. In addition, the House provides a pool from which the Prime Minister can draw in order to supplement ministers drawn from the Commons. The advantage offered by peers is that, with no constituency responsibilities, they are able to devote more time to ministerial work than is the case with ministers who do have constituency duties. It also has the advantage of widening the pool of talent available to the Prime Minister. Someone from outside Parliament can be elevated to the peerage at the same time as being appointed to government office. Labour Prime Ministers Tony Blair and Gordon Brown made use of this power to enhance the ranks of their ministerial team. They each brought in a range of people from industry, the law, broadcasting, the health service, finance, the military, the EU and the UN, as well as some Downing Street advisers, to serve as ministers. It was a practice maintained by Conservative Prime Minister David Cameron.

Ministerial appointments in the Lords have also enabled women politicians to be promoted. Seven women have served as Leaders of the House of Lords (Baroness Young 1981–2, Baroness Jay 1998–2001, Baroness Amos 2003–7, Baroness Ashton 2007–8, Baroness Royall 2008–10, Baroness Stowell, 2014–6, and Baroness Evans of Bowes Park, 2016–). Baroness Amos was the first black woman to serve in the Cabinet. Of the ministers in the Lords in mid-2017, just over one-quarter were women, including the Leader of the House.

However, the number of ministers appointed in the Lords is relatively small. At least two peers have traditionally served in the Cabinet (Lord Chancellor and Leader of the House) but usually no more than four. Four is a rarity and two, until 2005, the norm. Under the Constitutional Reform Act 2005, the Lord Chancellor need no longer be a peer; Jack Straw was the first MP to be appointed to the post, and his successors have also sat in the Commons. There is thus now only the Leader of the House who regularly sits as a member of the Cabinet. However, there have been occasions when a peer has been appointed to head a department. Gordon Brown appointed two peers to head departments: Business Secretary Lord Mandelson and Transport Secretary Lord Adonis. Usually about 30 other ministers, including whips, are drawn from the Lords. The number of ministers does not match the number of ministries, with the result that the whips have to take on responsibility for answering for particular departments – another difference from the House of Commons, where the whips have no responsibility for appearing at the despatch box. Even with a small number of posts to be filled, governments have on occasion had difficulty in finding suitable peers for ministerial office. It used to be the case that Conservative governments had sometimes to draw on young hereditary peers. Labour governments were limited by the relatively small number of Labour peers. The creation of life peerages in recent years, quantitatively and qualitatively, has widened the pool of talent. Both sides have tended to use the Whips' Office as a training ground for substantive ministerial office.

Scrutiny and influence

It is in its remaining functions that the House of Lords is significant. The House performs an important role as an agent of scrutiny and influence. The House does not undertake the task of scrutiny on behalf of constituents, as peers have none. Rather, the House undertakes a more general task of scrutiny. Three features of the House render it particularly suitable for the detailed scrutiny of legislation. First, as an unelected House, it cannot claim the legitimacy to reject the principle of measures agreed by the elected House. Thus, basically by default, it focuses on the detail rather than the principle. Second, as we have noted already, its membership includes people who have distinguished themselves in particular fields – such as the sciences, the law, education, business, industrial relations – who can look at relevant legislation from the perspective of practitioners in the field rather than from the perspective of elected party politicians. And, third, the House has the time to debate non-money bills in more detail than is usually possible in the Commons – as we have seen, there is no provision for a guillotine, and all amendments are

discussed. The House thus serves as an important chamber of legislative scrutiny, trying to ensure that a bill is well drafted and internally coherent. In order to improve the bill, it will often make amendments, most of which will be accepted by the Commons. In terms of legislative scrutiny, the House has thus developed a role that is viewed as complementary to, rather than one competing with (or identical to), that of the Commons.

The value of the House as a revising chamber is shown by the number of amendments that it makes to legislation. Most of these are moved by the government itself, but a significant proportion of these are amendments promised by government in response to comments made by backbench members. A study by Meg Russell of twelve Government Bills in the period from 2005 to 2012 found that a majority of substantive Government amendments (55 per cent) could be traced to amendments moved earlier by peers, with others attributable to reports from committees or pressure from MPs (Russell 2013: 173). The proportion is significant, but it is some of the individual changes achieved to Bills that can be the most important aspect of the impact of the House of Lords. The House makes a difference to legislation, both in quantitative and qualitative terms.

Each session, the House will typically agree anything between 500 to 4,000 amendments to bills. (In the 1999–2000 session, the number of amendments made totalled 4,761, constituting an all-time record.) In the 2007–8 session, of 7,259 amendments that were tabled, 2,625 were agreed (House of Lords 2008). In the 2015–6 session, 1,183 amendments were agreed (Table 18.3). Even these figures do not do justice to the scrutiny undertaken by the Lords. The discussion of amendments may not only result in changes to a Bill, but may also elicit promises from Government to consider action through other routes than legislation.

This role in scrutinising legislation – in so far as it constitutes a 'second look' at legislation – is of special importance given that it has been characterised as one of the two core functions of the House (Norton 1999). It is not a function that the House of Commons can carry out, since it is difficult if not impossible for it to act as a revising chamber for its own measures; that has been likened to asking the same doctor for a second opinion. The role of the House as a revising chamber is thus offered as being central to the case for retaining a second chamber. It is also the role that occupies the most time in the House: usually about 50 to 60 per cent is devoted to considering legislation.

Table 18.3 Amendments agreed to Government Bills in the House of Lords, 2015–6

Government Bills introduced	Amendments tabled	Agreed
Government Bills introduced in the House of Lords	1,062	395
Government Bills brought from the Commons	2,462	788
TOTALS	3,524	1,183

The House also scrutinises, and on occasion influences, government policy. Peers can debate policy in a less partisan atmosphere than the Commons and are not subject to the constituency and party influences that dominate in the elected House. They are therefore in a position to debate issues of public policy that may not be at the heart of the partisan battle and which, consequently, receive little attention in the Commons. Given their backgrounds, peers are also often – although not always – able to debate public policy from the perspective of those engaged in the subject. The House is able to debate higher education, for example, with considerable authority. The Lords contains several distinguished academics and members with experience in higher education: university chancellors, vice-chancellors and pro-vice-chancellors, masters of university colleges, professors, peers who have chaired higher education funding bodies or led enquiries into higher education and former secretaries of state for education. Although the House of Commons contains some former university lecturers, it does not have members with the same experience and status in education as those in the Upper House.

Expression

The House, like the Commons, also fulfils a number of expressive functions. It can bring issues onto the political agenda in a way not always possible in the Commons. MPs are wary of raising issues that may not be popular with constituents and that have little salience in terms of party politics. Peers can raise whatever issues they feel need raising. The House may thus debate issues of concern to particular groups in society that MPs are not willing to address. Formally, it is not a function the House is expected to fulfil. Indeed, according to *Erskine May*, the parliamentary 'bible' on procedure, Lords may indicate that an outside body agrees with the substance of their views, but they should avoid creating an impression that they are speaking as representatives of outside bodies. Thus, not only is the House not a representative assembly, it should avoid giving the impression of being one! In practice, peers take up issues that concern them, often alerted to the issue by outside bodies. Peers are frequently lobbied by outside organisations. As one lobbyist recorded, 'for the lobbyist, the House of Lords is a much easier place to get an issue aired – and it is likely to receive a fairer hearing, and a more erudite response' (Zetter 2008: 188). One extensive survey in the 1990s found that half of the groups surveyed were in touch with peers at least once a month, and almost one in five were in contact on a weekly basis (Baggott 1995: 93, 164). Each peer receives letters each year usually running into four figures, most from outside organisations. Some groups write to ask peers to move amendments to bills, some merely keep members informed of what is happening, and some are keen that peers raise issues with government, if necessary on the floor of the House. Some peers are particularly active in raising the concerns of particular groups, such as farmers, the disabled, the terminally ill or the people of Zimbabwe or pursuing very particular issues, such as railways, the effects of smoking or the upkeep of war graves.

The House also has the potential to express views to citizens and influence their stance on public policy. The function is limited by the absence of any electoral legitimacy, the capacity to influence deriving from the longevity of the House and its place as one of the two chambers of Parliament, as well as from the authority of the individual peers who may be involved. However, the scope for fulfilling this function is somewhat greater than in the House of Commons, simply because more time is available for it in the House of Lords. Between 20 and 30 per cent of the time of the House is given over each session to debates on motions tabled by peers: about 20 per cent of time is given over to general debates, and between 4 and 10 per cent of the time is given over to questions for short debate (QSDs), each lasting for 60 or 90 minutes.

Other functions

To these functions may be added a number of others, some of which are peculiar to the Upper House. Foremost among these historically has been the judicial function. The House until 2009 constituted the highest court of appeal within the United Kingdom. Although formally a function residing in the House as a whole, in practice it was carried out by an appellate committee comprising 12 law lords – judges specially appointed to the House to enable it to fulfil its judicial role – and peers who have held high judicial office. The law lords, though members of the House, avoided speaking on any matters that may be deemed partisan or involve measures on which they may later have had to adjudicate in a judicial capacity (see Hope 2009). They also normally abstained from voting, though on occasion a law lord voted on an issue that had been the subject of a free vote. However, this long-standing judicial function ceased to reside in the House in 2009, when a new Supreme Court, created under the Constitutional Reform Act 2005, came into being (see Chapter 14) and the law lords moved from the Palace of Westminster to form the justices of the new court.

Like the Commons, the House also retains a small legislative role, primarily in the form of private members' legislation. Peers can introduce private members' bills, and a small number achieve passage, but it is small – even compared with the number of such bills promoted by MPs. The introduction of such bills by peers is more important in fulfilling an expressive function – allowing views on the subject to be aired – than in fulfilling a legislative role. By convention, the government – even if opposed to the measure – does not divide against a private member's bill. Among contentious issues raised by such bills has been that of decriminalising the actions of those seeking to assist terminally ill individuals who wish to bring their lives to an end (assisted dying). The Patient (Assisted Dying) Bill introduced by Lord Joffe in 2003 helped ensure that the issue was discussed and enabled people with views on the issue to make them known. The issue remains on the political agenda. The time given to private members' legislation is important but not extensive: as in the Commons, it occupies usually less than 5 per cent of the time of the House.

The House is also ascribed a distinct role, that of a constitutional safeguard. This is reflected in the provisions of the Parliament Acts. The House, as we have noted, retains a veto over bills to extend the life of a parliament. It is considered a potential brake on a government that seeks to act in a dictatorial or generally unacceptable manner: hence, it may use its limited power to amend or, more significantly, to delay a bill. In practice, though, the power is a limited one, as well as one not expected to require action by the House on any regular basis. The House lacks an elected base of its own that would allow it to act, on a substantial and sustained basis, contrary to the wishes of an elected government. However, it can draw attention to the constitutional implications of measures and, as we shall see, has the means to do so on a sustained basis. This constitutes the other core function of the House in that it is a function that the House alone, as the second chamber, can fulfil: the House of Commons cannot act as a constitutional check upon itself.

In combination, these various functions render the House a useful body – especially as a revising chamber and for raising and debating issues on which peers are well informed – but one that is clearly subordinate to the elected chamber. The fact that the House is not elected explains its limited functions; it is also the reason why it is considered particularly suited to fulfil the functions it does retain.

Scrutiny and influence

The means available to the House to fulfil the tasks of scrutiny and influence can be considered, as with the Commons, under two heads: legislation and executive actions. The means

available to the House are also those available to fulfil its expressive functions.

Legislation

As we have seen, 50 to 60 per cent of the time of the chamber is given over to legislation. Bills in the Lords have to go through stages analogous to those in the House of Commons. There are, though, differences in procedure. First readings are normally taken formally, but there have been rare occasions when they have been debated: on four occasions (in 1888, 1933, 1943 and 1969), first readings were actually opposed. Second readings, as in the Commons, constitute debates on the principle of the measure. However, votes on second reading are exceptionally rare. Because of the Salisbury Convention, the House does not vote on the second reading of government bills promised in the government's election manifesto and, in practice, does not usually vote on the second reading of any bill in the Government's programme for the session. A vote may take place if, as exceptionally happens, a free vote is permitted. This happened in 1990 on the War Crimes Bill and in 1999 on the Sexual Offences (Amendment) Bill to lower the age of consent for homosexual acts to 16. Both bills had been passed by large majorities in the House of Commons, but both were rejected, on free votes, in the House of Lords. Both occasions were exceptional. Both measures were later enacted under the provisions of the Parliament Act.

The main work of the House takes place at committee and report stages (see Norton 2016). For some bills, the committee stage is actually dispensed with. After second reading, a motion may be moved 'That this Bill be not committed' and, if agreed to, the bill then awaits third reading. This procedure is usually employed for supply and money bills when there is no desire to present amendments. For those bills that do receive a committee stage, it is taken either on the floor of the House or in grand committee. Virtually all bills used to be taken on the floor of the House, but now in order to ensure that the House continues to examine all bills in detail, several are considered in grand committee.

The grand committee is, in effect, a parallel chamber. It comprises all members of the House and can meet while the House is in session. In practice, attendance is relatively small – comprising those with a particular interest in the measure – permitting sessions to be held in the Moses Room, an ornate committee room just off the Peers' Lobby. Votes cannot take place in grand committee, so amendments can only be accepted if no member objects. If objection is made, the matter has to be held over to report stage.

The House has also power to commit a bill to a special procedure public bill committee, which is empowered to take oral and written evidence. Of longer standing is the power to refer a bill, or indeed any proposal, to a select committee for detailed investigation. It is a power that has been utilised when it has been considered necessary or desirable to examine witnesses and evidence from outside bodies. The use of such committees, though, is rare and when used has normally been for private members' bills. The one exception in the twenty-first century was the referral to a select committee of the Blair Government's Constitutional Reform Bill.

Committee stage in the Lords differs notably from committee stage in the Commons. In the Lords, all amendments tabled are debated and – whether on the floor or in grand committee – any peer can attend the proceedings. All peers with an interest or expertise in a measure can thus take part, be it for the whole of the committee stage or on particular amendments of interest to them. There is thus the potential for a more thorough consideration than is possible in the Commons.

Report and third reading provide further opportunities for consideration. Again, all amendments tabled are debated. Report stage may be used to bring forward amendments that were promised by ministers at committee stage and also to offer new amendments. It is also an opportunity for members to return to issues that received an inadequate response by government at committee stage (although amendments rejected by the House at committee stage cannot again be considered). It is also possible for amendments to be made at third reading, and this opportunity is variously employed. The motion for third reading is put formally and agreed to and then amendments are taken. Once they have been dealt with, the motion 'That the Bill do now pass' is put. The result is that some bills, especially large or contentious bills, can and do receive a considerable amount of attention at different stages in the House of Lords.

Executive actions

As in the House of Commons, various means are available for scrutinising the actions of the executive. The principal means available on the floor of the House are those of debate and questions. Off the floor of the House, there are select committees and, at the unofficial level, party meetings.

Debates

Debates, as in the Commons, take place on motions. These may express a particular view or they may take the form of 'take note' motions. 'Take note' motions are employed in order to allow the House to debate reports from select committees or matters backbenchers wish to raise or to discuss topics on which the government wishes to hear peers' views.

All peers who wish to speak in debate do so, and there is a greater likelihood than in the Commons that the proceedings will constitute what they purport to be: that is, debates. Party ties are less rigid than in the Commons, though nonetheless still strong (see Norton 2003), and peers frequently pay attention to what is being said. Although in set-piece debates, such as Second Reading debates or Questions for Short Debate, the order in which peers speak is determined beforehand, it is common practice for a peer who is speaking to give way to interventions. Within the context of the chamber, the chances of a speech having an impact on the thought and even the votes of others are considerably greater than in the more predictable Lower House. Indeed, it is not unknown for peers when, uncertain as to how to vote, to ask 'What does X think about it?'

One day each week is given over to two general debates, up until the Whit recess. (The debate day used to be Wednesday, but in 2005, the House agreed to change it to Thursday.) Once a month the debates are determined by ballot. Peers wishing to have debates submit motions which then appear on the Order Paper, and two are drawn at random by the clerk on a set day. The topics on the remaining debate days are allocated to each of the parties in turn and to the cross-benchers. The two debates last up to a total of five hours. The balloted debates are automatically each of two-and-a-half hours in length. On the party days, the time, within the five-hour maximum, varies depending on the number of speakers. These general debates are occasions for issues to be raised by backbenchers rather than frontbenchers. The purpose of each short debate is to allow peers to discuss a particular topic rather than to come to a conclusion about it. Topics discussed tend to be non-partisan and the range is broad. Topics covered in general debates in the 2015–6 session included human rights and civil liberties, affordable housing, UK productivity, apprenticeships, legal aid, global climate change, prison reform and the Middle East and North Africa. The time devoted to each debate is divided equally among the number of backbench speakers (the opener and the minister replying have fixed time limits), and in the event of many peers wishing to speak, the time available to each may be as little as four or five minutes.

Questions

Questions taken on the floor in the Lords are of two types: oral questions and questions for short debate (QSD). (Lords may also table questions for written answer, and nowadays they do so in increasing numbers: more than 8,000 in the

Tuesday 4 April 2017 at 2.30pm

*Oral Questions, 30 minutes

***Lord Naseby** to ask Her Majesty's Government whether they will consult United Kingdom television broadcasters, particularly the BBC, to ensure that the viewing public can clearly hear the dialogue, particularly in dramas.

***Lord Clark of Windermere** to ask Her Majesty's Government whether they will increase spending on healthcare as a percentage of gross domestic product to be in line with the G7 average.

***Lord Harries of Pentregarth** to ask Her Majesty's Government what steps they are taking to reduce waiting times for patients using hospital patient transport.

†***Baroness Jolly** to ask Her Majesty's Government whether they plan to change the size and role of the Royal Marines.

National Citizen Service Bill [HL] Consideration of Commons Amendments [Lord Ashton of Hyde]

Children and Social Work Bill [HL] Consideration of Commons Amendments [Lord Nash]

Technical and Further Education Bill Third Reading [Lord Nash]

Higher Education and Research Bill Third Reading [Viscount Younger of Leckie] (*Queen's consent to be signified*)

The following two motions are expected to be debated together:

Baroness Hayter of Kentish Town to move to resolve that a Minister of the Crown do report to this House by the end of this Session on the progress made towards ensuring that qualifying non-United Kingdom European Economic Area nationals and their family members are able to retain their fundamental European Union-derived rights after the United Kingdom has left the European Union.

Baroness Smith of Basildon to move that it is expedient that a Joint Committee of Lords and Commons be appointed to consider and report on the terms and options for any votes in Parliament on the outcome of the negotiations on the United Kingdom's withdrawal from the European Union, including how any such votes be taken before any agreement is considered by the European Parliament; and that the Joint Committee do report by 31 October 2017.

Figure 18.2 House of Lords Order Paper

Source: www.parliament.uk

2015–6 session.) Oral questions are taken in Question Time at the start of each sitting: the House sits at 2.30 pm on Monday and Tuesday, 3.00 pm on Wednesday and 11.00 am on Thursday. (If sitting on a Friday, it sits at 10.00 am, but no questions are taken.) Question Time lasts for up to a maximum of 30 minutes and no more than four questions may be taken. Questions are similar to those tabled for oral answer in the Commons, although – unlike in the Commons – they are addressed to Her Majesty's Government and not to a particular minister (see Figure 18.2). Also, there is no departmental rota: the questions may be to different departments. One question may be answered by a Home Office minister and the next, say, by a Foreign Office minister. A peer rises to ask the question appearing in his or her name on the Order Paper, the relevant minister (or whip) replies for the government, and then supplementary questions – confined to the subject of the original question – follow. This procedure, assuming the maximum number of questions is tabled (it usually is), allows for seven to eight minutes for each question, the peer who tabled the question by tradition being allowed to ask the first supplementary. Hence, although Question Time is shorter than in the Commons, the concentration on a particular question is much greater and allows for more probing.

At the end of the day's sitting, or during what is termed the 'dinner hour' (when the House breaks in mid-evening from the main business), there is also usually a QSD. If taken during the dinner hour, debate lasts for a maximum of 60 minutes. If taken as the last business of the day, it lasts for a maximum of 90 minutes. A QSD may also be taken between the two general debates on a Thursday and some may be taken in Grand Committee. Peers who wish to speak do so – signing up in advance – and the appropriate minister replies to the debate. The advantages of QSDs are similar to those of the half-hour adjournment debates in the Commons, except that in this case there is a much greater opportunity for other members to participate. It is not unknown for the number of speakers to run into double figures. The topics are generally varied and non-partisan. During the 2015–6 session, for example, they included mental health of young people, doping in sport, world biodiversity, atrial fibrillation, national stroke strategy, HIV and AIDS, diabetes, dairy industry, music venues and Lyme disease.

Committees

Although the House remains a chamber-oriented institution, it has made greater use in recent years of committees. Apart from a number of established committees dealing, for example, with the domestic function of the House, it has variously made use of ad hoc select committees. Some ad hoc committees have been appointed to consider the desirability of certain legislative measures. A number have been appointed to consider issues of public policy. (Some are also appointed to deal with essentially internal matters, such as the membership of the House.) The House has also made use of its power to create sessional select committees, i.e. committees appointed regularly from session to session rather than for the purpose of one particular inquiry. The House has three long-established committees with reputations as high-powered bodies. They have been joined by three more, plus a joint committee.

The most prominent of the established committees is the *European Union Committee* (known, until 1999, as the European Communities Committee). Established in 1974, it undertakes scrutiny of draft European legislation, seeking to identify those proposals that raise important questions of principle or policy and which deserve consideration by the House. All documents are sifted by the committee chair (the only committee chair to be salaried), with those deemed potentially important being sent to a subcommittee. The committee works through six subcommittees (see Table 18.4), each subcommittee comprising two or more members of the main committee and several co-opted members. In total, the subcommittees draw on the services of 70 to 80 peers. Each subcommittee covers a particular area. A subcommittee, having had documents referred to it, can decide that the document requires no further consideration, or can call in evidence from government departments and outside bodies. If it decides that a document requires further consideration, then it is held 'under scrutiny' – that is, subject to the scrutiny reserve. The government cannot, except in exceptional circumstances, agree to a proposal in the Council of Ministers if it is still under scrutiny by Parliament.

Written evidence to a subcommittee may be supplemented by oral evidence, and on occasion (though not often), a minister may be invited to give evidence in person. The subcommittees prepare reports for the House (in total, about 20 to 30 a year), including recommendations as to whether the documents should be debated by the House. (About 2 per cent of the time of the House is taken up debating EU documents, usually on 'take note' motions.) The EU Committee has built up an impressive reputation as a thorough and informed body, issuing reports that are more extensive than its counterpart in the Commons, and which are considered authoritative both within Whitehall and in the institutions of the EU. The expertise of the Committee and sub-committees came into its own in 2016–7 following the referendum on EU membership. The sub-committees were able to undertake inquiries into the consequences of Brexit for the areas they covered, publishing a series of reports.

The *Select Committee on Science and Technology* was appointed in 1979 following the demise of the equivalent committee in the Commons. (The Commons committee has since been recreated.) The remit of the committee – 'to consider science and technology' – is wide, and its enquiries have covered a broad range. The committee is essentially non-partisan in approach and benefits from a number of peers with an expertise in the subject. Recent chairmen have included the President of the Royal Academy of Engineers and a former rector of the Imperial College of Science, Technology and Medicine. The chair at the end of the 2015–7 Parliament, the Earl of Selborne, had served as President of the Royal Agricultural Society of England, the Royal Institute of Public Health and Hygiene and the Royal Geographical Society. In recent sessions, the committee has investigated nuclear research and technologies, autonomous vehicles, and the relationship between EU membership and EU science. It has raised issues that otherwise might have been neglected by government – and certainly not considered in any depth by the Commons – and produced influential reports (see Grantham 1993; Hayter 1992).

The *Delegated Powers and Regulatory Reform Committee*, previously known as the Delegated Powers and Deregulation Committee, looks at whether powers of delegated legislation in a bill are appropriate and makes recommendations to the House accordingly (see Himsworth 1995). It also reports on documents under the Regulatory Reform Act 2001, which allows regulations in primary legislation to be removed by secondary legislation. The committee has established itself as a powerful and informed committee, its recommendations being taken seriously by the House and by government. Indeed, it is standard practice for the government to accept its recommendations.

The *Constitution Committee* was established in 2001 to report on the constitutional implications of public bills and to keep the operation of the constitution under review. It regularly issues reports on the constitutional implications of bills and has published major reports on, among other topics, the Union and devolution, the surveillance society, the use of referendums, the relationship between the executive, the judiciary and Parliament, the regulatory state and Parliament and the legislative process. It also reports on bills of constitutional significance. The *Economic Affairs Committee* was also appointed in 2001. It has published reports in recent sessions on the price of power: reforming the electricity market, the economics of the High Speed 2 (HS2) and building more homes. It has also established a subcommittee to consider the annual Finance Bill. The *Communications Committee* was appointed in 2007. It succeeded an ad hoc committee on the BBC Charter Renewal. Since its creation, it has undertaken a number of in-depth studies, publishing reports on the chairmanship of the BBC, the ownership of the news, government communications and public service broadcasting. More recently it has looked at topics such as skills for theatre, growing up with the internet and the future for Channel 4. The most recent committee to be created is the *International Relations Committee*, first appointed in 2016 to consider the United Kingdom's international relations. Its first substantive reports were on the Middle East and on the UK and the UN.

The House in 2006 also appointed another committee concerned with legislative scrutiny: the *Select Committee on the Merits of Statutory Instruments*. While the Delegated Powers Committee examines delegated powers embodied in a bill, this committee considers the use of those powers. It examines statutory instruments to determine whether they are flawed – for example, by imperfectly achieving their objectives or, because of their importance, whether they should be drawn to the special attention of the House. In 2012 the remit of the

Table 18.4 Committees in the House of Lords, April 2017

Name of Committee	Chairman
Communications	Lord Best (Cross-bench)
Constitution	Rt Hon. Lord Lang (Con)
Delegated Powers and Regulatory Reform	Baroness Fookes (Con)
Economic Affairs	Lord Hollick (Lab)
Subcommittee on the Finance Bill	Lord Hollick (Lab)
European Union Committee	Lord Boswell of Aynho (Non-affiliated)
Subcommittees:	
Financial affairs	Baroness Falkner of Margravine (Lib Dem)
Internal market	Lord Whitty (Lab)
Energy and Environment	Lord Teverson (Lib Dem)
External affairs	Baroness Verma (Con)
Justice	Baroness Kennedy of the Shaws QC (Lab)
Home affairs	Baroness Prashar (Cross-bench)
Scrutiny of Secondary Legislation	Rt Hon. Lord Trefgarne (Con)
Science and Technology	Earl of Selborne (Con)
International Relations	Rt Hon. Lord Howell of Guildford (Con)
[Joint Committee on Human Rights	Rt Hon. Harriet Harman QC MP (Lab)]
Ad Hoc Committees:	
Licensing Act 2013	Baroness McIntosh of Pickering (Con)
Social mobility	Baroness Corston (Lab)
Financial exclusion	Baroness Tyler of Enfield (Lib Dem)
Long-term sustainability of the NHS	Lord Patel (Cross-bench)
National policy for the built environment	Baroness O'Cathain (Con)

committee was extended to encompass orders modifying or abolishing public bodies made under the Public Bodies Act 2011. As a result, the committee was renamed the *Scrutiny of Secondary Legislation Committee*.

As a consequence of the passage of the Human Rights Act 1998, the two Houses have also created a *Joint Committee on Human Rights*. The committee is chaired by an MP, but it follows Lords procedures. It has six members drawn from each House. It considers matters relating to human rights and has functions relating to remedial orders (bringing UK law into line with the European Convention on Human Rights) under the 1998 Act. Its main task is reporting to the House on bills that have implications for human rights. It has helped contribute to a human rights culture in government as well as raise awareness of human rights in both Houses (see Hunt, Cooper and Yowell, 2012).

These permanent committees are variously supplemented by ad hoc committees, appointed to consider particular issues. Committees appointed in the 2016–7 session are listed in Table 18.4. The House appointed five ad hoc committees. It has become the practice to appoint one each session to undertake post-legislative review of a particular Act or legislation in a particular field. In the 2010–5 Parliament, committees were appointed to consider adoption legislation, the Inquiries Act 2005, the Mental Capacity Act 2005 and the Extradition Act 2003. In 2016–7, as shown in Table 18.4, it was the Licensing Act dealing with the sale of alcohol.

The committees thus constitute a valuable and growing supplement to the work undertaken on the floor of the House. They allow the House to specialise to some degree and to draw on the expertise of its membership, an expertise that cannot be matched by the elected House of Commons. Like select committees in the Commons, the committees choose their own topics of enquiry. However, unlike the Commons committees, there is no government majority. A typical 12-member committee will comprise 4 Labour peers, 4 Conservatives, 2 Liberal Democrats and 2 cross-benchers. The composition in terms of expertise and political affiliation encourages a notable bipartisan approach.

The committees also fulfil an important expressive function. They take evidence from interested bodies – the submission of written evidence is extensive – thus allowing groups an opportunity to get their views on the public record. Given the expertise of the committees, reports are treated as weighty documents by interested groups; consequently, the committees enjoy some capacity to raise support for particular measures of public policy. Committees also have the capacity to elicit a government response at the despatch box as well as in writing. The government provides a written response to each committee report – agreeing in 2005 to do so within two months, bringing it into line with the Commons – but if the committee recommends that a report be debated in the House, then time is found to debate it. The House has agreed that such debates should be in prime time, but this is not always possible to achieve.

Party meetings

The parties in the Lords are organised, with their own leaders and whips. Even the cross-benchers, allied to no party, have their own elected leader (known as the convenor) and circulate a weekly document detailing the business for the week ahead. (They even have their own website: www.cross-benchpeers.org.uk) However, neither the Conservative nor the Labour Party in the Lords has a committee structure. Instead, peers are able to attend the Commons backbench committees or policy group meetings, and a number do so. Any attempt at influence through the party structure in the Lords, therefore, takes the form of talking to the whips or of raising the issue at the weekly party meeting.

Party meetings, as well as those of cross-bench peers, are held each week. Such meetings are useful for discussing future business as well as for hearing from invited speakers. For example, in meetings of the Association of Conservative Peers (ACP) – the Lords equivalent to the 1922 Committee – the business usually comprises a short talk by a member of the executive of the 1922 Committee about developments in the Commons, the Chief Whip announcing the business for the following week and a discussion on a particular issue or a talk from a frontbencher or expert on a particular subject. When a major bill is coming before the House, the relevant member of the Shadow Cabinet (or, if in government, minister) may be invited to attend, along with a junior spokesperson, to brief peers on the bill. Sometimes party meetings have the characteristics of a specialist committee, since often peers with an expertise in the topic will attend and question the speaker. For a minister or shadow minister, or even an expert speaker, the occasion may be a testing one, having to justify a measure or proposal before an often well-informed audience.

Party meetings are useful as two-way channels of communication between leaders and led in the Lords and, in a wider context, between a party's supporters in the Lords and the leadership of the whole party. Given the problems of ensuring structured and regular contact between whips and their party's peers, the party meetings provide a useful means of gauging the mood of the regular attenders. They are also useful ways of enhancing communication with the Commons, former MPs often being active in the membership.

Reform: stage one

Demands for reform of the House of Lords were a feature of both the late nineteenth century and the twentieth century. As the democratic principle became more widely accepted in the nineteenth century, so calls for the reform of the unelected, Conservative-dominated House of Lords became more strident. Conservative obstruction of Liberal bills in the 1880s led the Liberal Lord Morley to demand that the Upper House 'mend or end', an approach adopted as Liberal policy in 1891. In 1894 the Liberal conference voted in favour of abolishing the Lords' power of veto. When the Lords rejected the Budget of the Liberal Government in 1909, the Government introduced the Parliament Bill. Passed in 1911, the preamble envisaged an elected House. An inter-party conference in 1918 proposed a scheme for phasing out the hereditary peers, but no time was found to implement the proposals. A 1948 party leaders' conference agreed that heredity alone should not be the basis for membership. Again, no action was taken. The Parliament (No. 2) Bill, introduced in 1968 by the Labour Government led by Harold Wilson, sought to phase out the hereditary element. The bill foundered the following year in the House of Commons after encountering opposition from Conservative MPs, led by Enoch Powell, who felt it went too far, and from Labour MPs, led by Michael Foot, who believed it did not go far enough. The willingness of the House of Lords to defeat the Labour Government in the period from 1974 to 1979 reinforced Labour antagonism. In 1983 the Labour Party manifesto committed the party to abolition of the Upper House. Under Neil Kinnock (leader 1983–92) this stance was softened. In its election manifesto in 1992, the party advocated instead an elected second chamber. This was later amended under Tony Blair's leadership to a two-stage reform: first, the elimination of the hereditary element; and, second and in a later parliament, the introduction of a new reformed second chamber. The Liberal Democrats favoured an elected second chamber – a senate – as part of a wider package of constitutional reform. Charter 88, the constitutional reform movement created in 1988 (see Chapter 13), included reform of the Upper House 'to establish a democratic, nonhereditary second chamber' as a fundamental part of its reform programme.

The Labour manifesto in the 1997 General Election included the commitment to reform in two stages. 'The House of Lords', it declared, 'must be reformed. As an initial, self-contained reform, not dependent on further reform in the future, the rights of hereditary peers to sit and vote in the House of Lords will be ended by statute.' That, it said, would be the first step in a process of reform 'to make the House of Lords more democratic and representative'. A committee of both Houses of Parliament would be appointed to undertake a wide-ranging review of possible further change and to bring forward proposals for reform.

The Labour victory in the 1997 General Election provided a parliamentary majority to give effect to the manifesto commitment. However, anticipating problems in the House of Lords, the Government delayed bringing in a bill to remove hereditary peers until the second session of the parliament. The bill, introduced in January 1999, had one principal clause which ended membership of the House of Lords on the basis of a hereditary peerage. It was passed by the House of Commons by a large majority. In the House of Lords, peers adhered to the Salisbury Convention and did not vote on second reading. However, they subjected it to prolonged debate at committee and report stage. In the Lords, an amendment was introduced – and accepted by the government – providing that 92 hereditary peers should remain members of the interim House. The 92 would comprise 75 chosen by hereditary peers on a party basis (the number to be divided according to party strength among hereditary peers), 15 to be chosen by all members of the House for the purpose of being available to serve the House (for example, as Deputy Speakers) and the Earl Marshal and the Lord Great Chamberlain, in order to fulfil particular functions associated with their offices. The government had indicated in advance that it would accept the amendment, on condition that the Lords did not frustrate passage of the bill. Although the House made various other amendments to the bill, against the government's wishes, the bill made it eventually to the statute book. All bar the 92 hereditary peers exempted by the Act ceased to be members at the end of the session.

When the House met for the state opening of Parliament on 17 November 1999, it was thus a very different House from that which had sat only the week before. It was still a House of Lords, but instead of a House with a membership based predominantly on the heredity principle, it was now primarily an appointed House, the bulk of the members being there by virtue of life peerages.

Reform: stage two

The passage of the 1999 Act did not end debate on the future of the second chamber. The years following the passage of the Act have seen continued and often heated debate. Figure 18.3 shows the key dates, but these are the principal dates in what has been a long and complex story.

After the return of the Labour Government in 1997, opponents criticised ministers for not having announced what form stage two of Lords reform would take. The Government responded by appointing a Royal Commission on Reform of the House of Lords to consider reform in the light of other constitutional developments while having regard to the need to maintain the Commons as the pre-eminent chamber. The Commission, chaired by a Conservative peer, Lord Wakeham

1999	House of Lords Act [removed all bar 92 hereditary peers from the House]
2000	Report of the Royal Commission on the Reform of the House of Lords (the Wakeham Commission), *A House for the Future* [recommended a minority of members be elected]
2003	House of Commons votes against retaining all-appointed House *and* against every reform option; House of Lords votes for all-appointed House
2007	House of Commons votes for 80% and 100% elected House; House of Lords votes for all-appointed House.

Figure 18.3 Lords reform – key dates

(a former Leader of both the House of Commons and the House of Lords), was appointed at the beginning of 1999 and was required to report by the end of the year. It held a number of public meetings in different parts of the country and completed its report by the end of 1999: it was published in January 2000.

In its report, *A House for the Future* (Cmd 4534), the Royal Commission recommended a House of 550 members, with a minority being elected. The report was extensive, but the reaction to it focused on its recommendations for election. Supporters of an appointed second chamber felt that it went too far. Supporters of an elected second chamber argued that it did not go far enough. Many critics of the report felt that at least 50 per cent of the members should be elected. The report did not get a particularly good press.

Although not well received by the press, the Commission's report was received sympathetically by the government. Following its 1997 manifesto commitment, it sought to set up a joint committee of both Houses, but the parties could not agree on what the committee should do. The Labour manifesto in the 2001 General Election committed the government to completing reform of the House of Lords: 'We have given our support to the report and conclusions to the report of the Wakeham Commission, and will seek to implement them in the most effective way possible.' In November 2001 the Government published a White Paper, 'Completing the Reform', proposing that 20 per cent of the members be elected. It invited comments, and the reaction it got was largely unfavourable. In a debate in the House of Commons many Labour MPs argued that the White Paper did not go far enough. Both the Conservative and Labour parties supported a predominantly elected second chamber. The Public Administration Committee in the Commons issued a report, *The Second Chamber: Continuing the Reform*, arguing that, on the basis of the evidence it had taken, the 'centre of gravity' among those it had consulted was for a House with 60 per cent of the membership elected. An early day motion favouring a predominantly elected second chamber attracted the signatures of more than 300 MPs.

Recognising that its proposals were not attracting sufficient support in order to proceed, the Government decided to hand over responsibility to Parliament itself. It recommended, and both Houses agreed to, the appointment of a joint committee. The committee completed the first stage of its work at the end of 2002, when it published a report addressing functions and composition. It argued that the existing functions of the House were appropriate. On composition, it listed seven options – ranging from an all-appointed to an all-elected House – and recommended that each House debate the options and then vote on each one. Both Houses debated the joint committee's report in January 2003. Opinion in the Commons was divided among the several options. Opinion in the Lords was strongly in favour of an all-appointed House. On 4 February both Houses voted on the options. MPs voted down the all-appointed option but then proceeded to vote down all the remaining options favouring partial or total election (see Maclean et al. 2003; Norton 2004). (An amendment favouring unicameralism was also put and defeated.) Peers voted by a three-to-one majority in favour of the all-appointed option and, by a similar margin, against all the remaining options. Of the options, that of an all-appointed chamber was the only one to be carried by either House. The outcome of the votes in the Commons was unexpected – commentators had expected a majority in favour of one of the options supporting election (the vote on 80 per cent of members being elected was lost by three votes) – and it was widely assumed in the light of the votes that there was little chance of proceeding with moves towards a second stage of reform involving election (see Norton 2004: 195–7).

Instead, the Government decided to introduce a bill to remove the remaining hereditary peers from the House of Lords, establish a statutory appointments commission and provide that peers could be expelled if convicted of an offence subject to a certain term of imprisonment. However, the Government abandoned the idea when it failed to craft an amendment-proof bill: it feared that MPs might try to amend it by introducing provisions for election. Some parliamentarians sought to keep the issue on the political agenda. The debate divided between those who were interested in reforming the powers of the Upper House and those who wanted to change its composition.

Labour peers in the Lords established a working party to review the powers, procedures and conventions of the House. Its report, published in 2004, favoured a new Parliament Act, embodying a time limit for bills in the Lords (and for bills starting life in the Lords to be brought within the scope of the Act), as well as a codification of conventions (Labour Peers Group 2004). The recommendations received a mixed response from peers, but in replying the Lord Chancellor, Lord Falconer indicated sympathy with the argument for putting a time limit on bills in the Lords.

The debate then switched to those who supported a reform of the composition of the House. In 2005 five prominent MPs – including former Conservative Chancellor Ken Clarke and former Labour Foreign Secretary Robin Cook – published a reform tract, *Reforming the House of Lords*, in which they argued the case for a 350-member second chamber, with 70 per cent elected, the elected members serving for the equivalent of three parliaments and with one-third of the membership being renewed at each general election (Clarke et al. 2005). Led by Liberal Democrat Paul Tyler, they introduced a private member's bill, the Second Chamber of Parliament Bill, designed to give effect to their recommendations. The bill made no progress.

Labour's 2005 election manifesto showed that the government was drawn more to a reform of powers than a major change in composition. Declaring that a reformed Upper House 'must be effective, legitimate and more representative without challenging the primacy of the House of Commons', it said that, following a review by a committee of both Houses, 'we will seek agreement on codifying the key conventions of the Lords, and developing alternative forms of scrutiny that complement rather than replicate those of the Commons; the review should also explore how the upper chamber might offer a better route for public engagement in scrutiny and policy making.' It also committed the party to legislate to place 'reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills'. The paragraph dealing with composition was short: 'As part of the process of modernisation, we will remove the remaining hereditary peers and allow a free vote on the composition of the House.'

In the new 2005 parliament a joint committee on conventions was appointed – it essentially endorsed the existing conventions, but made clear they would not necessarily be able to survive any substantial reform of the House – and the Government published another White Paper on Lords reform (HM Government 2007), this time indicating a preference for a House with 50 per cent of the members elected and 50 per cent appointed. In March 2007 both Houses were again invited to vote on various options. Peers repeated their votes of 2003, voting by three-to-one in favour of an appointed House and against all the other options. However, on this occasion, MPs voted in favour of an 80 per cent elected House (by 305 votes to 267) as well as for a wholly elected House (by 337 votes to 224), though the majority for a wholly elected House was inflated by a substantial number of Labour MPs who opposed an elected House voting for the option in order to sabotage the election: they reasoned that the Government would find unacceptable a wholly elected House.

The Government responded by establishing a group of leading members of each party to discuss ways of implementing the decision of the Commons. The outcome was a white paper in July 2008 (Ministry of Justice 2008) which identified different options but which produced little by way of concrete recommendations: Justice Secretary Jack Straw conceded in the foreword that it was not 'a final blueprint for reform'. It was announced that the white paper would be debated in both Houses before the end of the session. The White Paper evoked a largely apathetic response and was overshadowed by a range of other contentious issues. The debates in the two chambers never materialised. The government conceded that it would not be possible to legislate in that Parliament in order to create an elected chamber.

The issue of an elected House returned in 2010 with the formation of a Coalition Government. It was known that, had the Conservatives been elected, it was not an issue likely to have been pursued. The Liberal Democrats, however, were strongly committed to an elected House. The Coalition Agreement said that the Government would establish a committee to bring forward proposals for an elected House. The Government in 2011 published a draft bill and submitted it to a joint committee of both Houses for pre-legislative scrutiny. The committee published its report in April 2012, agreeing with some of the Government's proposals but recommending that they be subject to a referendum. The Government then published a House of Lords Reform Bill. It proposed a House with 360 elected members and 90 appointed – all to serve fixed, non-renewal 15-year terms – and with the elected members chosen by a semi-open regional list system. (The draft bill had proposed the single transferable vote.) There were also to be up to 12 Lords Spiritual and 8 ministerial members appointed to serve at any one time as ministers. The Government rejected the idea of subjecting the proposals to a referendum. The Bill attracted substantial opposition, not least from Conservative MPs and a large section of the media. Even 12 members of the 26-member joint committee that had considered the draft bill published an alternative report, arguing the case for a referendum and a constitutional convention. After a two-day debate on the Second Reading of the Bill in the Commons, the Government decided not to proceed with an attempt to timetable the bill. The Opposition was committed to voting against the timetable motion the Government had tabled, claiming it allowed insufficient time for debate; with a large number of Conservative MPs also opposed to the motion, it was clear that the Government would lose. The Second Reading vote was won by the Government, with the Opposition – supporting the principle of election – voting for

it. However, 91 Conservative MPs voted against it and a further 19 abstained from voting. The scale of the dissent was a major embarrassment for the Government. It also signalled that, without a timetable motion, there would be endless debate on the Bill. The Prime Minister, David Cameron, explored the possibility of scaling down the proposals, providing for the election of a small number of members at the next election and then leaving it to future Parliaments to decide whether to extend the provision. However, soundings of Conservative MPs who had voted against the bill revealed they were not shifting in their opposition. The following month, the Deputy Prime Minister, Nick Clegg, announced that the Government was not proceeding with the Bill. Ministers conceded that the issue of an elected second chamber was off the agenda for the rest of the parliament.

The future of the second chamber?

The question of what to do with the House of Lords has thus been a notable item on the political agenda. Given that the removal of hereditary peers from membership of the House was intended as the first stage in a two-stage process, the future shape of the House remains a matter of debate. What are the options?

In the period leading up to the reform of the House in 1999, four approaches to reform were identified (Norton 1982: 119–29). These were known as the four Rs – retain, reform, replace or remove altogether. With some adaptation, they remain the four approaches following the passage of the House of Lords Act (Norton 2017).

Retain

This approach favours retaining the House as a non-elected chamber. It argues that the interim House, comprising predominantly life peers, is preferable to an elected or part-elected chamber. The House, it is argued, does a good job. It complements the elected House in that it carries out tasks that are qualitatively different from those of the House of Commons. It is able to do so because its members offer particular expertise. By retaining a House of life peers, one not only creates a body of knowledge and experience, one also creates a body with some degree of independence. The cross-benchers in the House hold the balance of power and are able to judge matters with some degree of detachment. If the House were to be elected, it would have the same claim to electoral legitimacy as the Commons and would either be the same as the Commons – thus constituting a rubber-stamping body and achieving nothing – or, if elected by a different method or at different times, have the potential to clash with the Commons and create stalemate in the political system. Election would challenge, not enhance, the core accountability of the political system (see Norton 2007). Who would electors hold accountable if two elected chambers failed to reach agreement?

This approach has been taken by a number of MPs and peers, indeed by a clear majority of peers. Support for the retain option has also taken organisational form. In 2001 a campaign to argue the case against an elected second chamber was formed within Parliament. Led by an MP (Sir Patrick Cormack, Conservative MP for Staffordshire South) and a peer (this writer), it attracted a growing body of cross-party support in both Houses (Norton 2004). The group argued for some change, including closing off the by-election provision for peers, removing from membership peers who failed to attend, expelling those who committed criminal offences, enabling peers to apply for permanent leave of absence, and putting the Lords appointments commission on a statutory basis. Indeed, it is the only body that can claim some legislative success in recent years. It was behind a private member's bill which, with eventual government support, made it on to the statute book as the House of Lords Reform Act 2014. This provides for the automatic expulsion of any peer who commits a serious criminal offence, removes from membership any peer who fails to attend for a whole session, and enables peers to retire. (Since the measure was enacted, over 60 peers have utilised the provision.) It was also behind another private member's bill which made it onto the statute book the following year – the House of Lords (Expulsion and Suspension) Act 2015 – which extended the powers of the House to suspend a member and established the power to expel a member. Previously, the only way to remove a peer from membership was by legislation. For the group, incremental change within the House is the practical way forward. Having an elected House is deemed neither necessary nor desirable.

RETAIN: Retain an all-appointed House

REFORM: Have a minority of members elected

REPLACE: Replace the existing House with a largely or wholly elected House

REMOVE ALTOGETHER: Abolish the second chamber and have a unicameral parliament

Figure 18.4 The four Rs of Lords reform

Source: Norton (2017)

Reform

This approach, advocated by the Royal Commission, favours some modification to the existing House, although retaining what are seen as the essential strengths of the existing House. It acknowledges the value of having a membership that is expert and one that has a degree of independence from government. At the same time, it argues that a wholly appointed chamber lacks democratic legitimacy. Therefore it favours a mix of appointed and elected members. The advantages of such a system were touched on in the government's 1998 White Paper, *Modernising Parliament* (pp. 49–50): 'It would combine some of the most valued features of the present House of Lords with a democratic basis suitable for a modern legislative chamber.' The extent of the mix of nominated and elected members is a matter of some debate. Some would like to see a small proportion of members elected. The Royal Commission, as we have seen, put forward three options. The Government, in its 2001 White Paper, recommended that 20 per cent of the membership be elected and in 2007 increased this to 50 per cent. Some reformers favour an indirect form of election, members serving by virtue of election by an electoral college comprising, say, members of local authorities or other assemblies.

Replace

This approach favours doing away with the House of Lords and replacing it with a new second chamber. Some wish to replace it with a wholly elected house. Election, it is contended, would give the House a legitimacy that a nominated chamber, or even a part-elected chamber, lacks (see Box 18.2). That greater legitimacy would allow the House to serve as a more effective check on government, knowing that it was not open to accusations of being undemocratic. It would have the teeth that the House of Lords lacks. Government can ignore the House of Lords: it could not ignore an elected second chamber. If members were elected on a national and regional basis, this – it is argued – would allow the different parts of the United Kingdom (Scotland, Wales, Northern Ireland and the English regions) to have a more distinct voice in the political process. This stance is taken by a number of organisations, including the Liberal Democrats and Unlock Democracy. Both favour an elected senate. It is also the stance taken by a former Labour Leader of the House of Lords, Lord Richard (see Richard and Welfare 1999), who chaired the joint committee in 2011–2, and, as we have seen, by some senior MPs (Clarke et al. 2005). It is also the stance taken by the Labour Government following the vote of the House of Commons in 2007 and the Coalition Government formed in 2010.

BOX 18.2

An elected second chamber

The case for

- Allows voters to choose members of the chamber.
- Provides a limit on the powers of the first chamber.
- Provides an additional limit on the powers of government.
- Gives citizens an additional channel for seeking a redress of grievance or a change of public policy.
- Can be used to provide for representation of the different parts of the United Kingdom.
- Confers popular legitimacy on the chamber.

The case against

- Rids the second chamber of the expertise and the experience provided by life peers.
- Removes the independent element in the form of cross-bench peers, election generating party dominance.
- Undermines accountability of government – who should electors hold accountable if the second chamber disagrees with the first?
- Superfluous if dominated by the same party that has a majority in the first chamber.
- Objectionable if it runs into frequent conflict with the popularly elected first chamber.
- Will not be socially representative and in essence simply replicate the House of Commons.
- May prevent the elected government from being able to implement its manifesto commitments.
- Legitimacy of the political process will be threatened if conflict between the two chambers produces stalemate or unpopular compromise policies.

Others who favour doing away with the House of Lords want to replace it not with an elected chamber but with a chamber composed of representatives of different organised interests – a functional chamber. This, it is claimed, would ensure that the different groups in society – trade unions, charities, industry, consumer bodies – had a direct input into the political process instead of having to lobby MPs and peers in the hope of getting a hearing. The problem with this proposal is that it would prove difficult to agree on which groups should enjoy representation in the House. Defenders of the existing House point out that there is extensive de facto functional representation in any event, with leading figures in a great many groups having been ennobled.

There is also a third variation. Anthony Barnett and Peter Carty of the think-tank Demos have made the case for a second chamber chosen in part by lot (Barnett and Carty 2008; see also Barnett 1997). They argue that people chosen randomly will be able to bring an independent view. In evidence to the Royal Commission on the Reform of the House of Lords, they said:

> We want 'People's Peers' but they must come from the people and not be chosen from above, by an official body. It is possible to have a strong non-partisan element in the Second Chamber, and for this to be and to be seen to be democratic and lively.

The principle of public participation, they argued, should be extended to the national legislature.

Remove altogether

Under this approach, the House of Lords would be abolished and not replaced at all. Instead, the UK would have a unicameral legislature, the legislative burden being shouldered by a reformed House of Commons. Supporters of this approach argue that there is no case for an unelected second chamber, since it has no legitimacy to challenge an elected chamber, and that there is no case for an elected second chamber, since this would result in either imitation or conflict. Parliament should therefore constitute a single chamber, like legislatures in Scandinavia and New Zealand. The House of Commons should be reformed in order to be able to fulfil all the functions currently carried out by the two chambers.

Opponents of this approach argue that a single chamber would not be able to carry the burden, not least given the volume of public business in a country with a population of 65 million, many times larger than New Zealand and the Scandinavian countries with unicameral legislatures. Furthermore, they contend, the House of Commons could not fulfil the task of a constitutional safeguard, since it would essentially be acting as a safeguard against itself. Nor would it be an appropriate body to undertake a second look at legislation, since it would not be able to bring to bear a different point of view and different experience from that brought to bear the first time around.

Although abolition has on occasion attracted some support – including, as we have seen, at one point from the Labour Party – it is not an approach that has made much of the running in recent debate. It did, though, attract 163 votes when MPs voted on it in March 2007.

Polls reveal that opinion on the Lords is mixed. Supporters of change cite opinion polls showing that most respondents generally favour the reform or replace options, though with no clear majority for either. The 2010 British Attitudes Survey found that, of those asked, 6 per cent wanted the second chamber to be wholly appointed, 31 per cent mainly/wholly elected, 28 per cent equally appointed/elected, and 22 per cent supported abolition. A 2012 YouGov poll found that 10 per cent supported a wholly appointed House, 39 per cent a fully elected House and 32 per cent a partially elected one. However, a 2006 Populus poll found that people were quite capable of holding contradictory positions on the subject. In the poll 72 per cent of respondents thought that at least half the members should be elected and 75 per cent thought that the Lords should remain a largely appointed chamber!

Supporters of an appointed chamber cite polls which show that people view the work of the House of Lords in a positive light and do not regard reform as a priority for government. An ICM poll for the think tank *Politeia* in March 2005 found that 72 per cent of respondents thought that the House of Lords did a very or fairly good job; only 23 per cent thought that it did a fairly bad or very bad job. A similarly large majority – 71 per cent – thought that the House provided an effective check on the power of the government. Almost two-thirds – 63 per cent – believed that the powers of the Lords should not be reduced. Though there may be support for change, it appears not to be very deep: 59 per cent of those questioned agreed that reform of the Lords was not a priority for the next five years.

A 2007 Ipsos MORI poll carried out for the Constitution Unit at University College London also revealed that members of the public believed that in determining the legitimacy of the Lords, trust in the appointments process was most important (76 per cent listed it as very important), followed by the House considering legislation carefully and in detail (73 per cent), members being experts in their field (54 per cent), and the House acting in accordance with public opinion (53 per cent). Having some members elected by the public came fifth in the list of priorities. When asked to select the two most important factors, election again came fifth. Those who claimed to be knowledgeable about Parliament ranked the inclusion of elected members even lower still (Russell 2007: 6). The survey also found that a slightly higher proportion of the public consider the House of Lords is carrying out its policy role well than say the same about the Commons. As Meg Russell concluded:

> Contrary to expectations, given widespread support for elected members in many earlier surveys, this factor is not considered important in comparison with other factors such as careful legislative scrutiny, trust in appointments, and listening to public opinion. Even when offered two choices about what matters, relatively few members of the public pick election, with more supporting the factors already mentioned or inclusion of independent members. . . . However, there is concern about the way in which members of the House of Lords are chosen. One solution to this problem is clearly to introduce elections for the upper house. But our results suggest that a reform to the appointments process might actually have more widespread support.
>
> (Russell 2007: 8)

The debate continues. The options in terms of the contemporary debate are those of retain, reform, replace or remove altogether. Each, as we have seen, has its proponents. The arguments for and against an elected chamber are considered in Box 18.2. The battle to determine the future shape of the second chamber continues. No side has emerged triumphant.

BOX 18.3

BRITAIN IN CONTEXT

A distinctive second chamber

The House of Lords is distinctive as a second chamber because of its existence as a second chamber, its membership and its size.

It is distinctive, but far from unique, in existing as a second chamber; that is, as part of a bicameral legislature. Almost two-thirds of countries have unicameral legislatures (Massicotte 2001). Bicameral legislatures are, however, common in Western countries, especially larger ones, and in federal systems.

It is distinctive, but again not unique, in that its members are appointed rather than elected. (It was unique in the period up to 1999, when most of its members served in the House by virtue of having inherited their seats; no other major national legislature had a chamber based on the hereditary principle.) Of the 76 second chambers that exist, 21 are wholly directly elected, 17 are wholly indirectly elected, 15 are wholly appointed – 16 if you include the UK – and the rest are selected by a variety of means, such as part elected, part appointed (Russell 2012).

The House of Lords is unusual in that it has no fixed membership – the membership varies as some members die and others are appointed at different times. Members are also exceptional in terms of their tenure. Lords Spiritual retire at the age of 70. Other peers, unless they choose now to retire under the terms of the 2014 House of Lords Reform Act, serve for life. Though it is common for members of second chambers to serve longer terms than members of the first chamber, no other chamber is based predominantly on life membership. The House is remarkable also in terms of its size. Whereas it is common for second chambers to have a smaller membership than the first, the House of Lords is larger than the first and, indeed, has a claim to be the largest second chamber in the democratic world; the House of Commons has a claim to be the largest first chamber. Together, they form the largest legislature in the democratic world.

Chapter summary

The House of Lords serves as a notable body of scrutiny – both of legislation and of public policy – and as a body for giving expression to views that otherwise would not be put on the public record. As such, it adds value to the political process. The fact that it is not elected means that it has limited significance as a body for legitimising government and measures of public policy and as a body through which politicians are recruited to ministerial office. The fact that it is not elected also makes it a target of continuing demands for reform.

The question of what to do with the House of Lords has been a matter of debate for more than a century. The election of a Labour government in 1997, committed to reform of the House, brought it to the forefront of debate. The removal in 1999 of most hereditary peers from membership fundamentally changed the composition of the House. It became a chamber composed overwhelmingly of life peers. For some, that was a perfectly acceptable chamber. For others, it was not. The House of Lords serves not only as a forum to discuss political issues. It is itself a political issue. That is likely to remain the case.

Discussion points

- What are the principal functions of the House of Lords? Are they appropriate functions for a second chamber of Parliament?
- Does the House of Lords do a better job than the House of Commons in scrutinising government legislation? If so, why?
- Would a reform of the appointments process to the House of Lords be preferable to having an elected House?
- What would *you* do with the House of Lords – and why?

Further reading

The main texts on the House of Lords are Russell (2013) and Shell (2007). Crewe (2005) constitutes a fascinating anthropological study. On the work of the House, see also Norton (2016), Norton (2013) *passim*, Ch. 6 of Baldwin (2005), and Part IV of Blackburn and Kennon (2003). On peers' voting behaviour, see Norton (2003) and the work produced by the Constitution Unit at University College London, www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords

On the history of Lords reform, see Ch. 2 of Norton (2017), Ballinger (2012) and Dorey and Kelso (2011). On the continuing debate over Lords reform, see Norton (2017); the Joint Committee on the Draft House of Lords Reform Bill (2012); Fitzpatrick (2011); HM Government (2011); Tyrie, Young and Gough (2009); Ministry of Justice (2008); Norton (2007); Clarke et al. (2005); Shell (2004); Norton (2004); Public Administration Select Committee, *The Second Chamber: Continuing the Reform* (2002); and the Report of the Royal Commission on the Reform of the House of Lords, *A House for the Future* (2000). Useful comparative information is to be found in Russell (2000, 2012). There is also valuable material on the website of the Royal Commission, www.archive.official-documents.co.uk/document/cm45/4534/4534.htm

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Useful websites

Parliamentary websites

Cross-bench peers: www.crossbenchpeers.org.uk
Government Whips' Office: www.lordswhips.org.uk (provides details on future business, including speakers)
House of Lords: www.parliament.uk/business/lords/
House of Lords Select Committees: www.parliament.uk/business/committees/committees-a-z/lords-select/
The Work of the House of Lords: www.lordspublications.parliament.uk/product/1002/H-202
The Lords: Role and work: www.lordspublications.parliament.uk/product/2003/H-212

Reform

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Report of the Royal Commission on the Reform of the House of Lords (Wakeham Commission): http://webarchive.nationalarchives.gov.uk/20140131031506/http://www.archive.official-documents.co.uk/document/cm45/4534/contents.htm
Unlock Democracy (pro-election): www.unlockdemocracy.org.uk
Campaign for an Effective Second Chamber (against election): http://secondchamber.org

Opinion surveys

ICM: www.icmunlimited.com/polls/
Populus: www.populus.co.uk
YouGov: yougov.co.uk/news/categories/politics/
IpsosMORI: www.ipsos.com/ipsos-mori/en-uk