

THE ROLE OF THE HOUSE OF LORDS IN TERMS OF PARLIAMENTARY SCRUTINY OF LEGISLATION

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A Stereotype: discuss

The House of Lords is a faithful old hound, toothless, arthritic sometimes testy, asleep in front of the fire, an object of affection for what he once was, but of little present practical utility or continuing value – snoozing most of the time, waking periodically to scratch at persistent and irritating fleas.

There is amusement in that caricature, but also mischief. We need a second chamber to revise, scrutinise and check any elected government. It is a matter of pure indifference, in this strictly constitutional sense, what colour the government is. Law making is too important to left entirely to the Commons, though of course ultimately the Commons can insist on its own way. The important point I try to make is that the House of Lords is not the lost continent of Catatonia.

We need to define our terms.

To revise legislation means two things, **One**, to make the Government majority think again, if necessary even to abandon a Bill in whole or in part. **Two**, to make sure that agreed policy objectives are translated faithfully efficiently and appropriately into useable legislation.

I can come later to various examples, but I first define necessary characteristics which need to be fulfilled if any second Chamber is to be efficient.

1. It needs to be governed by clear and transparent standards of conduct.
2. It needs properly resourced and equipped opposition.
3. It needs working practices fit for the purposes of a modern age.

Since last June we have made substantial progress. In 2001 we agreed a new Code of Conduct which requires registration and declaration of interests which is more rigorous and challenging and open than that in the Commons.

Before we broke for the Summer Recess this year financial resource for the opposition parties was very substantially increased.

Finally, before we adjourned for the Summer we agreed a new raft of working practices, some of which are centrally relevant to the work of revision and scrutiny.

The role of the Lords in legislative scrutiny

- A much greater proportion of time in the Lords is spent discussing bills than in the Commons, generally just over half of all sitting hours (compared to 1/3 of sitting hours in the Commons). Most big bills start in the House of Commons. The House of Lords frequently amends bills but rarely kills them.
- The House of Lords is suited to being a revising chamber for several reasons:
 - (i) **Composition.** One of the perceived strengths of the House lies in the wide range of experience of its members. For any given policy area there are members who can bring practical understanding to the debate, either having worked in the given area itself or having a long history of working on policy in the area. Ministers need to win the argument to win the vote as Whips have few sanctions to impose on troops who are un-elected and are not young career politicians with ambitions in the party. The fact that members of the Lords do not have constituency duties means they have the time and are in the position to look at the more technical parts of legislation.
 - (ii) **Debate style.** Debates in the Lords are less confrontational and party political than those in the Commons. In the Commons the minister in charge of a bill is closely identified with the policy behind it, challenges are seen as politically motivated. In the Lords debate tends to focus on the merits of particular points and ministers cannot rely on uncritical support from their own party. This style makes it easier for ministers to concede points and accept amendments without appearing to 'lose'.
 - (iii) **Timetable.** Convention is that the Lords observe certain intervals in between each stage of a bill's consideration. Amendments in the Lords can also be made at Third Reading. These two factors mean the timetable in the Lords is much more leisurely than that in the Commons. Ministers have time to respond to points raised at an early stage in the Lords' consideration of a Bill by tabling a Government amendment before the Bill leaves the Lords. If the Bill has come from the Commons then amendments arising from points made in the Commons will often be made on arrival in the Lords.
 - (iv) **Procedure.** From the outside it looks as if the stages that Bills have to complete in each House are the same. However there are

several ways that the House of Lords legislative procedures are particularly suited to revising legislation:

(a) *All members of the House can participate in all stages.* Commons committee stage is taken in Standing Committees with restricted membership and an in-built government majority. Lords' committee stage is taken in either a Committee of the Whole House (on the floor of the House, with divisions) or a Grand Committee (off the floor of the House, without divisions). Both these procedures have wholly open membership.

(b) *There are no guillotines and there is no timetabling.* In theory this means proceedings could go on indefinitely. In practice the 'Usual Channels' agree how many days each stage of a bill is likely to take and the whips encourage the House to stick to these agreements. Filibustering is rare. Most members benefit from self regulation and realise the opportunity to take all amendments could not survive if they persistently abused the system.

(c) *There is no selection of amendments.* The House of Lords does not have a Speaker or Chair with the right to select speakers or amendments. All amendments tabled may be considered.

(d) *It is possible to move amendments at Third Reading* This means there is a further stage for amendments and votes. The principal purpose of amendments at this stage are to clarify remaining uncertainties, to improve drafting and to enable the government to fulfil undertakings given at earlier stages of the bill.

- (i) **Parliament Acts of 1911 and 1949** – These Acts were passed to ensure the reforming legislation of the Liberal and Labour governments of the time were not frustrated by the Conservative majority that always existed in the Lords. Under these Acts the Lords cannot veto Bills but can delay them for what is effectively a minimum period of 13 months (some types of Bills are exempt from the Acts, for example Bills that would extend the life of a parliament beyond 5 years). The Acts also severely restrict the Lords' powers over Money Bills which once passed by the Commons are allowed only one month to pass through the Lords.
- (ii) **Salisbury convention** – This understanding, that the Lords should not reject legislation which was passed by the Commons and carries a manifesto commitment, was reached between the Conservative opposition in the Lords (led by the 5th Marquess of Salisbury) and the Labour government elected in 1945. This

understanding has been under pressure since the House of Lords Act 1999 as the House of Lords feels increasingly legitimate.

Reforms in legislative procedure over the last 50 years

- Since 1958 (when Life Peers were created) the workload and work rate of the House of Lords has increased considerably. Bagehot divided the institutions of the British state into two categories: the “*dignified parts...*, which excite and preserve the reverence of the population” and the “*efficient parts...*, those by which it, in fact, works and rules.” In many respects the House of Lords has over the past 40 years made the transition from the first to the second.
- This change can be seen in the following trends:
 - (i) *Attendances* - Average daily attendance in 1959/60 was 136, in 1998/99 it was 446 and in 2000-01 average attendance was 347 despite the loss, under the House of Lords Act 1999, of 49% of those eligible to attend (654 Hereditary Peers).
 - (ii) *Sitting days* - The number of sitting days has also increased steadily, especially over the past 25 years. In the late seventies the House sat for an average of approx 125 days per session. By the late eighties this had increased to an average of 145 and by the 2001-02 session we sat for 200 days. It is the hardest working chamber in my experience.
 - (iii) *Activity* - The members of the House are also more active. An illustration of this is that since 1960 the number of Questions for Written Answers tabled by members of the House has increased ten fold.
- Over the past decade a significant change in the way legislation is considered has developed: Grand Committees.
- Grand Committees were proposed in 1994 by a group which reviewed the sittings of the House that was chaired by Lord Rippon of Hexham.
- Lord Rippon’s Group noted that about a quarter of the House’s time was being spent in committees of the Whole House. His group recommended that significant savings of time could be achieved by taking the committee stage of bills, except the most important Government bills, in a Grand Committee off the floor of the House.
- The Rippon Group made it clear that Grand Committees are not a device to help the Government get more legislation more quickly. Their aim is to improve the scrutiny and quality of legislation. Deferring votes until Report stage might help members concentrate on issues of importance.
- There are no nominations to Grand Committees, all members of the House may attend and participate fully and the procedures are identical to those of a committee of the Whole House except that divisions do not take

place. Grand Committees also have more flexible timetables and more consideration can be taken of the diaries of the main players when scheduling Grand Committees.

- Grand Committees go some way to easing the legislative log jam that can occur under the House of Lords' procedures. They allow more time in the chamber to be used for debates and scrutiny at Report and Third Reading. The use of Grand Committees is something I support very much and is the cornerstone to the reform of working practices which I will be discussing today.

Reforms in the area of scrutiny of human rights legislation

- Background Until January 2001, Parliament had no means of systematically monitoring the UK's compliance with human rights. The absence of parliamentary scrutiny on human rights grounds was particularly acute in relation to legislation.
- The arrangements for raising human rights issues depended on members with special expertise being available at the right moment in either the House of Lords or the House of Commons, and having had the opportunity to consider the proposed measure; or on the work of interested non-governmental organisations in briefing members on human-rights points, and the willingness of members to take up the points.
- The passage of the Human Rights Act 1998, coming into force on 2 October 2000, made more pressing the need for new processes to allow Parliament to protect human rights.
- Although the Act carefully preserves the legislative supremacy of Parliament, the courts have a duty under section 3 of the Act to 'read and give effect' to all legislation, so far as possible, in a manner compatible with Convention rights, and superior courts may make a declaration of incompatibility under section 4 if it proves impossible to interpret primary legislation in a compatible manner.
- Parliament, when legislating, therefore needs to be aware of the possible implications of Convention law for the way its legislation will be implemented. Parliament remains free to decide what (if any) remedial action should be taken when primary legislation is found to be incompatible with a Convention right, whether by a court in the UK or by the European Court of Human Rights in Strasbourg. But this freedom imposes special responsibilities on Parliament to ensure that each House understands the human rights implications of the course which it contemplates and makes a properly informed decision.
- **Statement of Compatibility** - To help Parliament, the Act requires the Government to examine the compatibility of its legislative proposals with Convention rights. Under section 19(1) of the Act, a Minister who introduces a Bill to either House must make a statement in writing either—
 - (a) that, in his or her opinion, the Bill is compatible with Convention rights, or
 - (b) that he or she cannot state that the Bill is compatible, but that the Government nevertheless wishes Parliament to consider it.

- The statement of compatibility, which appears on the face of printed copies of the Bill, serves to focus Parliament's attention on the need to evaluate the Bill in the light of the UK's human rights obligations. Ministers have agreed to explain the reasons for their view in relation to any particular provision if asked for an explanation during the passage of the Bill.
 - A similar concession has been made in respect of statutory instruments subject to the affirmative resolution procedure, and private Bills.
 - In addition, since January 2002 the Explanatory Notes to Bills, published by the Government, contain an account of the Convention rights which the Government considers are engaged by particular provisions of Bills, with a brief account of the Government's view as to the compatibility of the provisions. Apart from this, however, each House must form its own view of the Bill in the light of an assessment of its human rights implications.
- **The Joint Committee on Human Rights: remit and membership.** To assist them in monitoring human rights in the UK, the two Houses established a Joint Select Committee, which met for the first time on 31 January 2001.
- The Committee's terms of reference, as eventually agreed by the two Houses, are very wide. They include—
 - (a) reporting on matters relating to human rights in the United Kingdom, excluding individual cases. This means that, although the passage of the Human Rights Act 1998 was the stimulus to the creation of the Committee, the Committee's remit extends well beyond the Convention rights which have become part of national law under that Act. On the other hand, the exclusions from its remit mean that it has no case-load (unlike a human rights ombudsman or, perhaps, a human rights commission), and no power to consider human rights outside the UK (which fall within the remit of the House of Commons Select Committee on Foreign and Commonwealth Affairs); and
 - (b) a specific duty to scrutinise remedial orders made under section 10 of, and Schedule 2 to, the Human Rights Act 1998 (a form of subordinate legislation designed as a fast-track method of amending primary or subordinate legislation which has been held, by a UK court or the European Court of Human Rights, to be incompatible with a Convention right).
 - The Committee has the power to call for persons and papers (allowing it to insist on receiving evidence from Government Departments and Ministers, as well as other people and organisations). Like any Select Committee in Parliament, it is the ultimate arbiter of the meaning of its own terms of reference.
 - There are six members of the Committee from each House, who bring varied experience and expertise to their task. Some are lawyers, but not all the lawyers are human-rights experts. The non-lawyers include both career politicians and members who have worked in different areas of the public and private sectors. In its present form, at least, there is no

Government majority on the Committee: there are six Labour members and six others. The Committee is chaired by Jean Corston MP, a Labour backbencher (who also chairs the PLP).

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- **Mode of operation.** The Committee quickly decided that it should make legislative scrutiny a major plank in its platform. After an experimental examination of five Bills in the 2000-01 session of Parliament, the Committee has examined every Bill (including PMBs and Private Bills) introduced to either House in the 2001-02 session.
- If a Bill appears to raise a significant issue relating to human rights, the Committee's Chair writes to the Minister in charge of the Bill, asking very specific questions about the Minister's reasons for thinking that particular provisions are compatible with specified rights.
- As well as establishing a dialogue between the Committee and the Minister or the Department responsible for a measure, the Committee has encouraged people and organisations outside Parliament to make submissions to it, and has encouraged Ministers to respond to those concerns it has thought were well founded.
- The Committee has interpreted its wide remit as allowing it to inquire about any human rights which people in the UK are entitled to assert against the State under international law, EC/EU law, or national law.
- For example, as well as the Convention rights under the ECHR, it has pursued issues relating to rights under the International Covenant on Civil and Political Rights (ICCPR), the International Convention for the Elimination of all forms of Discrimination against Women (ICEDAW), the International Convention for the Elimination of all forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESC), the European Social Charter (ESC), the Convention on the Rights of the Child (CRC), the Convention on the Status of Refugees, and the EC Equal Treatment and Social Security Directives. Whenever it has done so, the Government has given full and reasoned responses to the Committees questions.
- **Objectives** - In its legislative scrutiny work, the Committee has four objectives. First, it tries to increase the transparency of the reasoning supporting the proposed legislation. Secondly, it can stimulate the Department to give further consideration to matters which give rise to concern. Thirdly, involving civil society in its work strengthens the element of participatory (or at least consultative) democracy in the legislative process. Fourthly, the Committee can put pressure on Departments to respond to issues originally identified by other Members of both Houses, NGOs, and other persons and bodies.
- **Usefulness** - The Committee's reports appear to be regarded as helpful in both Houses. They are regularly cited during debates on Bills, particularly in the House of Lords. The Second and Fifth Reports of 2001-02, both on the Anti-terrorism, Crime and Security Bill, seemed to be treated as worthwhile contributions to discussion of the Bill.
- Peers sometimes ask the Committee to assist the House by examining, or re-examining, particular aspects of Bills: such requests have led the Committee to publish further reports on various measures, including the Employment Bill and the City of London (Ward Elections) Bill. The

Committee hopes that in this way both Houses will be able to conduct more fully informed discussion of the human rights issues arising from Bills, without depending entirely on the Government or individual peers to provide it with information and advice.

Reforms in the area of the scrutiny of secondary legislation

- Another area where our working practices have changed is in the consideration of secondary legislation. Very little time is spent scrutinising secondary legislation on the floor of either House. This is despite the fact that secondary legislation is often as complex and detailed as any bill.
- Evidence to the Royal Commission on House of Lords reform shows that the amount of secondary legislation has grown dramatically in the past couple of decades. Since 1980 the number of statutory instruments laid before Parliament has increased by more than a third.
- **The Delegated Powers and Regulatory Reform Committee** - To ensure that the Executive did not attempt to delegate too much power away from Parliament a committee now known as the Delegated Power and Regulatory Reform Committee was established in 1992. This committee scrutinises bills as they pass through Parliament and reports whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of delegated power to an in inappropriate degree of parliamentary scrutiny. One particular type of clause that the Committee is very alert to is known as a 'Henry VIII Clause' which amends the statute itself by delegated legislation. If the Delegated Powers and Regulatory Reform Committee reports a bill for any inappropriately delegated power the Government will need a very robust reason to not amend the reported clauses as the House takes the Committee very seriously.
- **JCSI** - All statutory instruments go to the Joint Committee on Statutory Instruments before they can be considered on the floor of the House of Lords. This committee was set up in 1972 to undertake the technical scrutiny of statutory instruments since it was considered that the separate systems which had developed in each House had produced defects and anomalies in parliamentary control. The JCSI can report an instrument on any ground not impinging on the merits of or policy behind the instrument. They scrutinise the *vires* of the instruments, make sure it does not make an unusual or unexpected use of the powers conferred by the parent statute, check that it is not defectively drafted and that it has been laid correctly and in a timely manner.
- Less than 1% of negative instruments laid before the House of Lords are scrutinised further having been passed by the JCSI. However if a Peer has a particular concern about a statutory instrument they can put down a 'prayer to annul' within 40 days of the instrument being laid.

- The House of Lords can veto statutory instruments. This is an anomaly of the Parliament Acts which were passed when statutory instruments were much rarer.
- Convention has been that the House does not exercise this veto. However as the House has got bolder in recent years this convention has started to slip. On 22 Feb 2000 the House defeated two pieces of secondary legislation: the Greater London Authority (Election Expenses) Order 2000, an affirmative instrument, and the GLA Elections Rules 2000, a negative instrument. The issue was the same in each case: free postage of candidates' election material. This was the first time the House had ever voted down a negative instrument, and only the second time it had voted down an affirmative instrument, the first being in 1968. The Parliament Acts do not cover secondary legislation; the Lords cannot claim that they are merely asking the Commons to think again. The Government conceded the substantive point; interestingly, they did so not by amending the orders, which did not and could not cover free postage, but by amending the Representation of the People Bill which by lucky chance was before Parliament at the time.

The Wakeham report recommended this power of veto be removed from the House of Lords and this is something the Joint Committee on House of Lords reform will no doubt consider.

Current reforms in the scrutiny of primary legislation

- The first stage of House of Lords reform was achieved in 1999, and consisted of the removal from the House of all but 92 of the members present on a hereditary basis.
- This in itself has affected the behaviour of the House in legislative scrutiny. Freed from the embarrassment of a hereditary majority, the House has, I believe, become more confident and assertive.
- For example. On 20 Jan 2000 the House made a wrecking amendment to the Criminal Justice (Mode of Trial) Bill [HL]. The Government reintroduced the bill as a Commons bill, and on 28 Sept 2000 the Lords threw it out on Second Reading. I remember it well, since I was in charge of the bill as Attorney General. The bill did not implement a manifesto commitment, so there was no breach of the Salisbury convention. As you will know, the issues are still unresolved.
- It is not unheard of for the Lords to kill a Government bill. There were three previous instances in the 1990s: the War Crimes Bill in 1990 and 1991, the European Parliamentary Elections Bill in 1998 (closed lists), and the Sexual Offences (Amendment) Bill in 1999 and 2000 (homosexual age of consent), all of which were eventually passed under the Parliament Act. So I cannot claim that the Mode of Trial Bill marked a clean break with the

past. But it certainly shows that the post-99 House is no Government poodle.

- The composition of the House obviously has an impact on how the House works but the less high profile procedural reforms are equally important in developing a professional chamber. I recently chaired a group of senior members of the House which considered ways to improve the working practices of the House. This report has recently been approved by the House and the reforms will begin to be implemented from the start of the next session for a trial period of two sessions.

Working Practices – the background to the new proposals

- The changes agreed were intended to improve the efficiency and the effectiveness of the House of Lords. Efficiency is bound up with issues such as procedural reform, sitting hours and working conditions and many of our recommendations related to such matters. But we recognised that procedural reform alone could not make the House more effective. Effectiveness had more to do with the balance of power between the House and the Government.
- Finding a package of proposals that all party leaders could sign up to was a real challenge. The House's effectiveness depends to a large extent on the adoption of a corporate approach in which political differences and short-term political considerations were disregarded in the interests of the health of the Institution of Parliament as a whole. Thus the Government had to agree to changes which it might find burdensome or inconvenient but which would, for example, improve the quality of legislative scrutiny and thus of legislative output. The Opposition parties had to be willing in return to forego some of their opportunities to delay, even though this might seem to be making life easier for the Government.
- Effective parliamentary scrutiny is a valuable discipline for Governments of all political complexions and it might go some way to reducing public disenchantment with our political system.
- To quote the recent report of the Hansard Society, *The Challenge for Parliament: Making Government Accountable*, “*The potential exists [for the Lords] to develop a different dynamic to the Commons, opening up new and innovative means of scrutinising the Government.*” I profoundly agree.

Working Practices – the recommendations

- **Pre-legislative Scrutiny and Carry Over** –Improving the quality of Parliament’s legislative output is our main challenge. Our first recommendation was that most major Government bills should be subject in draft to pre-legislative scrutiny by Parliament. This was closely linked to

our second recommendation that subject to the right of the House of Commons to determine its own procedures, bills that have received pre-legislative scrutiny in either House should, on a motion moved in the House in possession of the bill at the end of the session, be allowed to be carried-over into the next session; but if a bill that has been carried over does not reach the statute book by the end of the session following carry-over it should fall, as now.

- Together these two recommendations increase the time and amount of scrutiny a bill can be subjected to.
- Pre-legislative scrutiny is a way of addressing the criticism that is frequently levelled at Parliament: that we produce legislation that is ambiguous or inaccurate and not always fully thought out. Observers of Parliament have for many years suggested that defective legislation is the result of weaknesses in the legislative system. Government and Parliament together have a duty to get the law right for the benefit of the citizens of this country.
- Pre-legislative scrutiny gives interest groups and others time to marshal their arguments, and it is sometimes easier for Government to accept changes to a draft bill than to accept changes once policy is firmly set.
- The ability to carry over a bill for a single session would enable each bill to proceed at its own pace and receive appropriate scrutiny without the constraints imposed by the sessional cut off.
- The implementation of this recommendation will take time. Increased pre-legislative scrutiny will put extra pressure on the resources of Parliamentary Counsel who are already very busy. For pre-legislative scrutiny to become the norm will also require a culture shift in Whitehall where a more long term strategic view will have to be taken by departments.
- **The SI Sifting Committee** - Much of secondary legislation is routine and unremarkable but some can be quite controversial. Currently we have no formal mechanism to help us distinguish which is which.
- The Royal Commission on House of Lords reform noted this and recommended that *'the second chamber should consider setting up machinery to sift statutory instruments'*. Following on from this a new Lords select committee will be established to examine the merits of every statutory instrument subject to parliamentary scrutiny.
- Currently the Joint Committee on Statutory Instruments examines secondary legislation to ensure it does not breach its vires and is drafted correctly. The new committee will approach statutory instruments from the perspective of the policy they contain and will highlight those instruments that are important enough to warrant further scrutiny and debate.

- **Questions** - Strengthening scrutiny is important on the floor of the House as well as off it. The House of Lords is at its strongest and most lively during starred question time.
- Starred question time is the ideal opportunity for back benchers to put Ministers on the spot and efficiently obtain information from the Government.
- Therefore in the package of reforms the House has agreed there is a proposal to extend the number of questions the House can ask of ministers - 2 more each week.
- Back benchers will benefit from this recommendation as they gain more opportunities to put their questions to the Government, and the public will benefit as they will see more evidence of the Government being held to account.
- **Sitting times.** All the recommendations I have outlined so far concern altering procedures to strengthen scrutiny. But it is not only the way the House does things that determines how effectively they are done; when they are done is also important.
- This House is one of the busiest legislative chambers in the world. It sits on more days per year than either the House of Commons or the European Parliament and we also regularly sit late into the night. In the 1999-2000 session there were 91 sittings after 10pm and in the 1998-1999 session there were 89 sittings after 10pm.
- Although this shows an extraordinary commitment to the work of the House on behalf of many noble Lords I do not think we are at our best when debating the minutiae of legislation at midnight, seven hours into a debate. Therefore from the start of the 2002-03 session the House will normally rise not later than 10pm.
- This proposal will significantly reduce the number of hours available on the floor of the House to consider legislation and therefore we recommended that this should be coupled with greater use of Grand Committees.
- The way the sittings of the House are currently arranged has been perceived by some as biased against those of us who do not live and work in the south-east. It is vital that the House of Lords has representation from all the regions of the United Kingdom. For this reason we have recommended that on Thursdays the House should sit at 11.00am and conclude divisible business not later than about 7.30pm. This would allow most noble Lords to leave London early on Thursday evenings to return to their homes or businesses for four full nights each week.

- In addition to achieving a better distribution of the House's working hours each week we noted that it is also desirable to achieve a better distribution of sitting days over the parliamentary year. Currently neither chamber normally sits in August or September. Parliament is now frequently recalled during the summer recess to scrutinise important developments in the country and the world which obviously do not stop to observe the summer holidays. Robin Cook has announced that the House of Commons will in future sit during September.
- Therefore we recommended that the House of Lords should be willing to sit in September, and in return the House should have longer recesses at Christmas, Easter or Whitsun, or rise earlier for the summer recess.
- **Grand Committees** - We recommend that Grand Committees be used for the kind of bills considered suitable by the Rippon Group; and that after second reading there should be a motion in the House to commit each bill to the appropriate committee, usually a Grand Committee or a Committee of the Whole House.
- Although Rippon envisaged a significant increase in the number of bills going to Grand Committee, the Report precluded 'important government bills' from going to Grand Committee. We agree that these bills are better taken on the floor of the House where divisions are possible. 'The most important Government bills' are hard to define before you see them. We believe they include bills that contain very controversial policy issues or have constitutional implications. The committal at the end of Second Reading to whichever committee forum is deemed appropriate will remove the automatic bias towards committees of the Whole House which is inherent in the current system. Our Group anticipated this motion would be tabled after agreement with the Usual Channels and would therefore not be too controversial or surprising.
- If the majority of Government bills do go to Grand Committee this will not only allow the House to rise earlier but will also free up time on the floor of the House for other business. This will free up time for more back-bench debates and more debates on select committee reports and on general topics in prime time on the floor of the House. Having time to debate such issues in prime time will allow more noble Lords to participate. It may also increase the coverage such debates get which is sometimes sadly lacking.
- We have also recommended that Grand Committees may sit in September, whether or not the House is sitting. By having Grand Committees sitting in September we might be able to begin to shift the backlog of work on business such as Law Commission bills and Consolidation bills.

Law Commission Bills

One of the serious blemishes on parliamentary activity is the cavalier treatment often given to Law Commission reports. They are generally of the

highest quality. They frequently include draft bills, so that a good deal of specialised work of drafting has already been done.

Many such Bills are not politically controversial. They deal with pressing questions of technical law reform left unanswered for many years. I well understand the feeling of frustration this engenders.

A critically important reform agreed to by the Lords in July of this year was to agree that Grand Committees can sit in September, whether or not the House is sitting. This offers a very important opportunity.

Second Readings of Law reform Bills could be held before the Summer recess, with the September Grand Committee able to discuss and digest the Bill. There is very considerable expertise in the Lords to deal with such Bills. Relatively few members would, probably, wish to attend, but Lords Grand Committees are open to all members. I look forward to using this new procedure, which would mean that on our return in October a prompt Report Stage would be held; and I am in discussion with the Lord Chancellor to see what Bills might be tested in this way.

The following Law Commission law reform reports are awaiting implementation:

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
1991	194	Distress for Rent
1992	208*	Business Tenancies: Landlord and Tenant Act 1954, Part II
1993	218*	Legislating the Criminal Code: Offences against the Person and General Principles
1994	222	Binding Over
	226	Judicial Review and Statutory Appeals
1995	229	Intoxication and Criminal Liability
	231*	Mental Incapacity
1996	237*	Involuntary Manslaughter
	238	Landlord and Tenant: Responsibility for State and Condition of Property
1997	245*	Evidence in Criminal Proceedings: hearsay and Related Topics
	246	Shareholder Remedies
	247*	Aggravated, Exemplary and Restitutionary Damages
1998	248*	Legislating the Criminal Code: Corruption
	249	Liability for Psychiatric Illness
	251*	The Rules Against Perpetuities and Excessive Accumulations
	253*	The Execution of Deeds and Documents by or on behalf of Bodies Corporate
	255*	Consents to Prosecution
1999	257	Damages for Personal Injury: Non-Pecuniary

		Loss
	261	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits
	263	Claims for Wrongful Death
2001	267*	Double Jeopardy and Prosecution Appeals
	269	Bail and Human Rights Act 1998
	270	Limitation of Actions
	271*	Land Registration for the 21 st Century: A Conveyancing Revolution
	272	Third Parties – Rights against Insurers
	273	Evidence of Bad Character in Criminal Proceedings

The twelve outstanding Law Commission Bills already accepted by the Government in full or in part are marked *.

(source: Appendix C of the Law Commission's 36th Annual Report, available on its website at: <http://www.lawcom.gov>).

Pre-legislative scrutiny of draft bills

- This will afford new opportunities for scrutiny of actual statutory text (as opposed to White Papers etc) before the ink dries. The Law Society and other professional bodies have already shown themselves keen to take advantage.

Conclusion

- Evolution is a useful word to use to describe the process of change in the role of the House of Lords. Things do not change rapidly. After all it took nearly 100 years from the time the removal of the hereditary right to sit in Parliament was written into the preamble of the first Parliament Act to the day a bill was introduced.
- However in recent years there has been much change in the way that legislative scrutiny is conducted in the House of Lords.
- With the majority of hereditary Peers gone the House is increasingly flexing its muscles and it feels more legitimate.
- Members of the House are increasingly active, attending more and participating more.

- Grand Committees are increasingly replacing Committees of the Whole House and should do so even more now, this will ease the legislative log jam and free up time for other debates.
- Departments are increasingly expected to produce drafts of their bills in the session before they are to be introduced. This will increase the scrutiny timetable and allow more people to get involved in scrutiny.
- The sessional cut off is becoming less of a cull as carry-over is now possible.
- Secondary legislation is to be increasingly subjected to scrutiny with the advent of a new SI sifting committee.

Look ahead

- Procedural reform is going ahead as I have outlined. However how the second stage of House of Lords reform will effect the composition, powers and role of the Lords is still unknown.
- A Joint Committee has been set up to consider Lords reform. The remit of this Joint Committee is:

1) to consider issues relating to House of Lords reform, including the composition and powers of the second Chamber and its role and authority within the context of Parliament as a whole, having regard in particular to the impact which any proposed changes would have on the existing pre-eminence of the House of Commons, such consideration to include the implications of a House composed of more than one "category" of Member and the experience and expertise which the House of Lords in its present form brings to its function as the revising Chamber; and

(2) having regard to paragraph (1) above, to report on options for the composition and powers of the House of Lords and to define and present to both Houses options for composition, including a fully nominated and fully elected House, and intermediate options;

and to consider and report on

(a) any changes to the relationship between the two Houses which may be necessary to ensure the proper functioning of Parliament as a whole in the context of a reformed second Chamber, and in particular, any new procedures for resolving conflict between the two Houses; and

(b) the most appropriate and effective legal and constitutional means to give effect to any new parliamentary settlement;

and in all the foregoing considerations, to have regard to—

(i) the report of the Royal Commission on House of Lords Reform (Cm 4534);

(ii) the White Paper The House of Lords—Completing the Reform (Cm 5291), and the responses received thereto;

(iii) debates and votes in both Houses of Parliament on House of Lords reform; and

(iv) the House of Commons Public Administration Select Committee report *The Second Chamber: Continuing the Reform*, including its consultation of the House of Commons, and any other relevant Select Committee reports.

- When the full report of the Joint Committee will appear is uncertain, but the initial report is expected before the end of the year.