

Public Administration and Constitutional Affairs Committee

Oral evidence: Report of the Lord Speaker's Committee on the size of the House, HC 662

Tuesday 30 January 2018

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Members present: Mr Bernard Jenkin (Chair); Ronnie Cowan; Paul Flynn; Dame Cheryl Gillan; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones; Sandy Martin.

Questions 1-105

Witness

[I:](#) Lord Burns, Chair, The Lord Speaker's Committee on the Size of the House.

Examination of witness

Lord Burns.

Q1 **Chair:** Welcome to our witness today in this continuing inquiry about the future of the House of Lords. I wonder if you could identify yourself for the record, please.

Lord Burns: I am Terry Burns, Lord Burns. I was chairman of the Lord Speaker's Committee which undertook this report.

Q2 **Chair:** It is tantalising that we cannot ask you about the Government's latest leaked economic forecasts, about which you must have some—

Lord Burns: I am very pleased.

Chair: In the spirit of the ecumenical approach we take to these matters we will deny ourselves that. Thank you very much for coming today. Can you just explain for the Committee, what was the background to this report and what led to your Committee's formation?

Lord Burns: It was towards the end of 2016 that Lord Cormack had a motion in the House of Lords about the need to reduce the size. It came out of a group that they have, the Campaign for an Effective Second Chamber. There was very strong support for the proposals that the House of Lords was too big. They said it ideally needed to be lower than the



HOUSE OF COMMONS

House of Commons, but also recognised that if we ever got back to a figure that was lower than the House of Commons then it was also necessary to do something about its continued growth. It was after that, as the next step forward, that the Lord Speaker set up a Committee to look at practical and politically viable options that might lead to progress on this issue. I was asked to chair the Committee. There were six of us on the Committee. We ended up taking rather longer than we intended, partly because of the breaks for the general election and so on, and we produced our report in October.

Since then there has been a debate in the House of Lords on the report. There were 94 speakers. It is never quite clear how to count some of the voices but the Minister, Lord Young, pointed out that as far as he could see only 10 people who spoke out of the 94 disagreed with the proposals.

Q3 **Chair:** How much do you agree that House of Lords reform tends only to happen in small and incremental steps when everybody accepts that this is the inevitable next step, rather than by some big bang?

Lord Burns: I fully accept that, and indeed that very much influenced the way that we set about the report. The history I am familiar with shows the enormous difficulty of making large changes, because one inevitably gets into the whole question of an elected second Chamber, and whenever that has cropped up the House of Commons has been divided on the issue.

There has been progress in recent times by making small steps. In one sense, going back to 1958, the creation of life peerages was at the time a small step. But we have had two Acts in recent times, one that enabled retirement to take place and a second one with powers of expulsion, which, although small in themselves, have made a difference.

Q4 **Chair:** Lord Norton of Louth has regularly said to his pupils at Hull University, as professor of politics, that there is always a majority in Parliament for reform of the House of Lords but never any particular majority for any particular reform. How is this going to be different?

Lord Burns: Because this, in one sense, falls within the category of small changes. It is not trying to do anything with regard to the powers of the House of Lords in relation to the House of Commons. It is saying that we are looking for a solution here that is appropriate for as long as the House of Lords remains an appointed House. It is not getting into some of the big issues that have caused the trouble in the past; it is trying to find a logical way of putting in place a ceiling on the size of the House of Lords, which is probably a characteristic of almost every other legislative chamber that there is; and where there is a process of nomination, which has some relation to the tide of political opinion but does not seek to reproduce the balance in the House of Commons.

In principle these are quite small steps, whereas the effectiveness of it could nevertheless be significant, because the Committee came to the



HOUSE OF COMMONS

view that without change we were faced with an inexorable rise in the size of the House of Lords. Because we have a situation where people are appointed for life, where there is no limit on the size of the House of Lords and where incoming Governments, not surprisingly, want to change the balance in their own favour, we find ourselves on this treadmill whereby the numbers keep increasing, and increasing quite substantially. One of the statistics in the report is that since 1958 there have been something like 1,400 life peers appointed, of whom 700 have been appointed since 1997. The rate of increase has not only has been rising but picking up. This is partly as the result of two longish periods in office by Governments of one political party, which meant that at the end of that period they had a significant majority in the House of Lords. Then the succeeding Government wished to overturn that and could only do so by increasing the total size of the House.

Chair: Thank you very much. A brief supplementary from Kelvin Hopkins.

Q5 Kelvin Hopkins: When Jack Straw had his series of votes in the House of Commons some time ago, almost half of the Labour Back Benchers voted for abolition, for a unicameral Parliament. There are countries that have abolished their second Chamber, and there is a substantial proportion of public opinion that is in favour of the abolition of the House of Lords. Presumably this was not discussed at all, not referred to, during the—

Lord Burns: Not at all. No, we were very much dealing with—

Kelvin Hopkins: Christmas comes to mind, I have to say.

Lord Burns: That, I think, quite clearly falls into the category of fundamental and huge constitutional change, and as I have suggested to the Chairman that is not what this was about. This started with the notion of a more effective second Chamber, and it is not dealing with the whole constitutional issue as to whether we are unicameral, bicameral or whatever.

Q6 Paul Flynn: Why did you concentrate on reducing the size of the House of Lords rather than other fundamental reforms?

Lord Burns: Simply because that was the question we were asked. The question that the Lord Speaker asked, which followed the debate Lord Cormack had had, was about size because of the way the House had been increasing in size over a period of time. It is not difficult to find mechanisms or imagine scenarios where it could continue to increase in size.

We had an exam question, we had an exam paper and we answered the questions on the exam paper. There was only one question, and that was about the feeling that the House of Lords was too large and that it was going to get larger and should be reduced.

Q7 Paul Flynn: I am not sure I heard all 94 speakers, but I heard a great deal of the debate, as I do—I find it part of my educational process to



HOUSE OF COMMONS

listen to the House of Lords debates. One of the effects of the quality of debates in the Lords is to infantilise the Commons, where there is a feeling that we can pass Bills that are wholly inadequate and then wait for the Lords to correct them and knock them into shape.

A recent example is the Bill on legal highs. They had intelligent discussion in the Lords based on scientific principles, and then we had the debate in the Commons, which was entirely prejudice-rich and evidence-free. This has become a feature of our democracy: that we are relying on the Lords to do the work—the people who are not the elected politicians—and allowing the House of Commons' legislative procedures to deteriorate.

Lord Burns: My reading of the history of the House of Lords is that there has always been an issue about tidying up legislation and having some people who are prepared to go through the detail of it and ensure that it was consistent, that there were not loopholes in it, there were not shortcomings. I think that continues to be the case.

I suspect the guillotining of Bills in the Commons has made a difference here. In the time I have been in the House of Lords, my guess would be that you get more things that have not been subject to scrutiny in the Commons. But I do not think, if I may say so, that is an issue here as far as I am concerned. That is not what we were challenged to do. We were challenged to leave as much of the infrastructure and the system as it is and simply find a way whereby we could deal with this problem—you might describe it as a loophole—where we have a second Chamber where people are entitled to sit for life and where Prime Ministers are entitled to appoint however many they wish to appoint. This is unlike any other Chamber. This means that there is no effective cap on the numbers.

Q8 **Paul Flynn:** Looking back over the past proposals, from Lloyd George to Robin Cook, this one appears to be the most practical of all that have come forward. In the Robin Cook vote a large number of people who turned it down were Members of Parliament who had expectations, maybe vain expectations in many cases, of one day ending their retirement years wrapped in ermine, and there was a strong vested interest in continuing with this retirement club for MPs. Do you think it would be helpful if MPs were debarred from taking places—former MPs, former Ministers—in the House of Lords so that its character can be changed as it is in many other countries where you do not have former politicians using it as a retirement home?

Lord Burns: That is not part of my exam question. I am not sure that it is relevant to the exercise that we have done. I would simply say from a personal point of view that I find the contribution that is made in the House of Lords by former Ministers very helpful. They are familiar with the legislative process. They know many of the issues and many of the dangers that are there.

But this is not for me or the Committee. We were taking those arrangements as given. We simply wanted to have a framework that



HOUSE OF COMMONS

meant that it could be more effective. In the end we have taken the view that it is for the political parties to decide which individuals should come into the House of Lords. We simply want to put some constraints on the numbers that can be put in. There is a particular problem that if you have lifetime membership, given what is happening to average age, the flow of vacancies is not very high. In recent times we have had no more than 20 deaths a year.

Q9 **Chair:** How many retirements?

Lord Burns: In the last two years, as it happens, I think there have been—what are the numbers? I would say the number of retirements we have had since the present Prime Minister came into office has been twice the number of deaths. It has increased the flow, but for some time it has been running at about 20 a year. Twenty a year gives very little scope, certainly for rebalancing after an election, but it also means refreshments—

Q10 **Chair:** How many Members are substantively incapacitated from participating in the legislative process?

Paul Flynn: The evidence is, I understand—

Chair: Sorry, can I just get an answer for that question?

Paul Flynn: You interrupted the question I was asking. I don't ask many, and I will be gone soon.

Chair: Can I ask how many Members are substantively incapacitated?

Lord Burns: I don't know. There are 25 who are ineligible for various reasons—they are on leave of absence, which some of the incapacitated people are—but increasingly people who are incapacitated are taking retirement.

Q11 **Paul Flynn:** Before I take up my wheelchair and depart, the evidence is that elevation to the House of Lords increases your expectation of life by 15 years, and the evidence that we have seen is that the people that have retired—wonderful people like Lord Grenfell and Lord Clinton-Davis last week—are the ones who make the major contribution with their experience and their wit, and the ones who are hanging on are the ones who make the lesser contribution.

What I am suggesting to you is that there should be some other criteria for saying that for the 220 or 250 Lords who are the core of the activities and do the work there should be some way of continuing, but making sure that those who are not pulling their weight, who are signing in and then not contributing or speaking in any way, are encouraged to go. At the moment it seems that the best of the Lords are retiring early and the worst are continuing.

Lord Burns: My impression is that the people who are retiring are doing it because they are feeling that they have served in the way that they



HOUSE OF COMMONS

feel that they can, and some of them have had illness and some of them are simply finding it more and more difficult.

We did look at this whole question of whether there was some way of measuring contribution so that there could be some objective method of reducing the size, and I am afraid we came to the view that it is simply not practical. There is no simple way at all that would be fair to all to say who should be asked to go because they have not been contributing sufficiently. We looked at a number of options, as set out in the report—we looked at terms, we looked at age limits, we had some examination of whether you could measure people's contribution—and the view that the Committee came to was that the only way that we could make this work effectively was to have term limits. That is why we came forward with the proposal that people who join the House of Lords should serve 15 years, and when they have done 15 years they should voluntarily go. The average age of people arriving in the House of Lords is now 59, and 15 years in any particular activity may well be enough.

- Q12 **Paul Flynn:** Just a very brief question. Hasn't the work of the Lords been enriched in recent years by the number of Members who are incapacitated, some of them very seriously incapacitated, but do devices to be there?

Lord Burns: Yes. We have a number of people who have incapacities and who make a significant contribution, but we have had some who were finding it more and more difficult and who have chosen to retire.

- Q13 **Sandy Martin:** Lord Burns, your Committee's report focused on non-legislative proposals for reform. Can you explain why?

Lord Burns: We were asked to look at things that were politically viable options. We took the view that given the enormous amount of legislation that is programmed to come to Parliament over the next few years, this was never going to find its position in the legislative calendar, so we should try to find a solution where we could make some relatively rapid progress if all the parties were agreed. That does not stop legislation at some later stage, but the aim was to have something that we could put in place to make some progress reasonably quickly. The view of the Committee, which consisted of very senior people from all parties, was that certainly in the remainder of this Parliament there was going to be no scope for any legislation on the subject of the House of Lords.

- Q14 **Sandy Martin:** You said earlier that you believed that the House of Lords responds best to small and incremental steps. Would you say that the reduction from 1,290 members to 670 members at a stroke in 1999 was a small incremental step?

Lord Burns: No. That was a dramatic change and, for reasons that are not difficult to describe, the legislation was capable of going through, which was the exclusion of the hereditary peers. There have been two substantial changes in my lifetime: one was the introduction of life



HOUSE OF COMMONS

peerages in 1958, and the second was the exclusion of all but 92 of the hereditary peers in 2000.

Q15 **Sandy Martin:** Neither of those were small or incremental.

Lord Burns: No. Those were two very large ones, but more attempts than that have failed over the same period.

Q16 **Sandy Martin:** Your small and incremental step is also a very slow step, which has taken 15 years to come to fruition. Do you not think that there might be a much more radical change coming through legislation in the course of the next 15 years?

Lord Burns: If there was to be a radical change, this does not prevent that taking place. This simply puts us on a course that may be reducing the size less rapidly than you might like but is reversing the direction. The direction is that each year, each series of years, the numbers go up. I regard the issue of trying to find a mechanism that puts in place a cap as being in some ways of more importance than the issue of whether the House is 600 or 700 or even 500.

It is about trying to get a logical framework into place for something for which, frankly, there is no framework. There is no envelope. There is no boundary around it, and there is a great deal of concern about it. Indeed, I think there is a great deal of concern in the general public about large-scale nominations to the House of Lords, which simply increase its size.

Q17 **Sandy Martin:** Do you not accept that there is a large-scale concern in the general public about virtually every aspect of the House of Lords, and that if the majority of the Members of the House of Commons and the majority of the population of the country want quite radical reform in the House of Lords, a small and incremental step that is going to take 15 years is probably going to be rendered largely irrelevant?

Lord Burns: I do not agree at all. The impact of it will be much greater than that. It is reversing the tide. It may be that there are a lot of people, including in the House of Commons, who believe that there should be radical change, but I simply repeat that from past experience there will be no agreement about what that radical change should be. Therefore to simply put off doing anything about it because there might be something else coming down the track seems to me not a good idea.

I have to come back to the issue that the question that we were asked, and the proposals that we have put forward, are quite specific. They are in relation to the ever increasing size of the House of Lords and the problems that has been creating.

Q18 **Ronnie Cowan:** I read the report, and nowhere do I find any justification for 600. How did you come up with the number of 600?

Lord Burns: The only justification for that particular number is that it is less than the size of the House of Commons, which was very much the



HOUSE OF COMMONS

view that came out of the debate that took place before the Committee was appointed.

There have been a number of people who have tried to look at this in a more objective way, but this proves to be very difficult because it is a full-time Chamber but many of the people work part-time in the House of Lords. Working out the numbers that you need to make it effective to both man the Committees and do the legislative scrutiny is far from straightforward. We settled for 600, which would not only be less than the present size of the House of Commons but less than or equal to the proposals that were in place at the time when we were set up.

Frankly, nothing changes here if you were to say it should come down to 500. It may take a little longer to get there, and nothing would change if it was 700, because that is not the problem. The problem is not whether it should be 500, 600 or 700; the problem is that if nothing is done, the size of the House will go up and could well go up quite considerably.

Q19 Ronnie Cowan: If we peg it at 600 then there is still the issue of the composition of that 600, and how it relates to the 21st-century United Kingdom. We have 26 archbishops and bishops. We have 90 hereditary peers. That is not changing, so that is an imbalance. It is even less representative. I think 46 peers currently represent BME communities, and 26% are women. Does that number address any of those issues?

Lord Burns: The balance of the membership of the party groups is an issue for the parties. If people are unhappy with the composition of the House of Lords, that is an issue for the parties making the appointments to the House of Lords. The House of Lords Appointments Commission, which deals with the Cross-Bench Members, does take a lot of account of what you mentioned.

The issue with the bishops and hereditaries is simply that those are both in statute and require legislation to make a change. Again, if these proposals were to go forward there is nothing to stop future legislative change dealing with those two particular questions. Once we had decided that the proposals we would make would be without legislation, we had to leave on one side the issue of the bishops and the hereditaries. It is not a huge issue.

Q20 Ronnie Cowan: That was a decision you made. That was not part of the remit, was it?

Lord Burns: No, but it came within the remit that we needed practical solutions to this, and there is a Private Member's Bill again this year on the abolition of the by-elections for hereditary peers. On the face of things at the moment it is probably not going to go through, but that could go through if all the parties agreed at any point.

What was quite important in this was not to get involved in such things that were extremely difficult and that would simply lead to a postponement of any plans, when the urgency is to get in place a



HOUSE OF COMMONS

framework that will enable us to make progress. The best in this whole world has frequently been the enemy of the good. That is one of the histories of trying to do something about the Lords.

- Q21 **Ronnie Cowan:** I am still perplexed as to how we came to the number of 600. I do not see any workings in here that say that is what is required to cover Committees and the whole job. One hundred and nine made no spoken contributions last year, 72 never spoke in the Chamber, did not put in a written question or serve on any Committee. So to me, a simplistic view is this: there are a few who can walk right now because they have contributed nothing at all to the second Chamber. They have done a disservice to the second Chamber, because there is a hard core of people there who have done an enormous amount of most valuable work that has been undermined by this bloated number. When you had the debate, 94 people spoke in it. I would have expected them all to have been there and speaking in this debate. It didn't happen.

Lord Burns: Sorry, I am not quite sure what point you are making here.

Ronnie Cowan: I have put in a few points. I still feel 600 is an inflated number and I cannot understand why—

Lord Burns: Is an inflated number?

Ronnie Cowan: Yes. I do not see why there are 600 people to do the job. It is clearly not been currently covered by 600 people. There are not 600—

Lord Burns: No. At the moment there are 800 members.

- Q22 **Ronnie Cowan:** Yes, but they are not all working.

Lord Burns: No, but votes are frequently up in the 500s.

- Q23 **Ronnie Cowan:** Committee work, and people speaking in debates—how many are involved in that?

Lord Burns: The number of Committees varies from time to time, but there are a substantial proportion of people either engaged in legislative scrutiny or who are members of Committees.

- Q24 **Chair:** Lord Burns, what is the largest number that have voted in a Division in the last few years?

Lord Burns: I do not know off-hand. I believe it is the 500s. Just over 600.

Chair: Just over 600, so—

Ronnie Cowan: Chair, I believe it is not about who turns up to vote. We see that in this place as well. People turn up, I haven't seen them before in my life and I don't know what they do. They get filed out to vote. It is about who contributes to the Committees, who contributes to the cross-party groups. I know what number of peers do this and do it diligently.



HOUSE OF COMMONS

Q25 **Chair:** Okay. That is two questions—first, how many peers are on Committees on a regular basis in the legislation process, would you say?

Lord Burns: Under the legislative process—

Ronnie Cowan: That is the important question. That is what I started from. Who is actively involved?

Lord Burns: Let's step back. If you were saying that you are content with these proposals but yet you preferred that instead of 600 we should be working with a number of 400, then that is a direction that one could go down. Without legislation it would take a good deal longer than we have said, because you would require more people to go or you would have fewer appointments. Work has been done on that. The Labour party did some work about two years ago, which came up with a number of 480, I think, that was the minimum of what was required.

Q26 **Ronnie Cowan:** 450 I think it was, yes,

Lord Burns: We could have said 500, but the question would have been; what difference is that? Where did you get that from? I want to emphasise to you that the issue here is about getting a cap put in place. Whether this is 500, 550, 600 or 650 is a second-order question, because that number can be adjusted as we go along. The key is how to make the substantive change whereby people are no longer appointed for life and where the balance of appointments are made with some objective criteria in mind. That would then mean, like in all legislative Chambers that I am aware of, that there was a cap on the number. You could only make appointments when there were vacancies, and the envelope where it was taking place would be controlled. That would then put pressure back upon the people making the appointments to appoint people who are going to make a substantial contribution to the Committees and to the debates.

Q27 **Dr Rupa Huq:** I want to ask about the rate of reduction. The report says, "There is widespread agreement on the urgency of addressing the House of Lords' size". Given all that, is 11 years fast enough? It does not sound that urgent.

Lord Burns: Yes. The problem is, as has been pointed out by a number of people, if no action is taken it is not that the House will stay at the present size, although the present Prime Minister has been very cautious in terms of numbers of appointments. The likelihood is that the size will rise. The first step is how to reverse the tide and how to move to a position where the numbers are coming down. We can only go, under these proposals, at a pace whereby we can generate sufficient vacancies through retirements. We have no powers to force people to leave. I have had discussions with the political parties about what they think is a realistic rate at which we can get retirements.

I do not think getting to 600 is of anything like the same urgency as preventing the size from going any further, turning it around and starting to make it come down, and getting in place an objective way of making



HOUSE OF COMMONS

appointments. The alternative is that we spend forever talking about this and the size goes up and no progress is made. The important thing to the Committee was that we should get in place a mechanism that not only changed the direction but meant that we had in sight an arrangement that would produce a cap on the size. Those are very big objectives.

We did hundreds of different possibilities about the speed of reduction, and to go any faster than this would either require getting retirements at a faster rate than we think could be achieved on an equal basis between the parties, or would mean that there was no scope at all for appointments. Frankly, to say that there is no scope for appointments is just politically naive, so we have to have both of them. This was a great balancing exercise to match some possible increase in the speed of retirements with sufficient scope for appointments to be made so that we can have new Ministers and so that the House can be generally refreshed. A solution that simply led to the average age of the House going up with no new appointments in order to get the number down from 800 to 600 faster would not work.

Q28 Dr Rupa Huq: Eleven years is an estimate, isn't it? You don't know how it will go.

Lord Burns: Yes. If we were to take this to the next stage where we seriously looked at this and we had a faster rate of retirements, then we could have a faster speed of getting it down. We came to the view that getting caught up in this issue gets you to one of these positions, as I said earlier, where the best becomes the enemy of the good. This is an exercise in political reality.

Q29 Dr Rupa Huq: What would you say are the main obstacles to a faster rate?

Lord Burns: It is about the pace at which you can persuade existing Members to leave. As it happens, now that we have started to talk about this the pace of retirements has picked up a bit. I think there have been 45 exits, a combination of deaths and retirements, since July 2016.

Q30 Dr Rupa Huq: Finally, do you think a faster rate is a desirable thing?

Lord Burns: It would be more attractive in many ways, but I would not want to have a faster rate of progress simply by freezing appointments and saying that there shall be no new appointments, because that is not politically viable.

Q31 Chair: How much are financial considerations a reason why peers do not retire?

Lord Burns: I suspect that is one of the reasons, but there are lots of other reasons. The large majority of people who come to the House of Lords do it because they enjoy it. They are interested in public policy, they enjoy participating in that process, but financial reasons probably do play a part.



HOUSE OF COMMONS

Q32 **Dr Rupa Huq:** I was showing a group of constituents around both Chambers yesterday, and all they remembered is the TV documentary that showed that people leave the taxi running and claim their fee.

Lord Burns: Yes, it was a very damaging story. It is inevitable in television programmes that certain things get highlighted and there are some things that are very memorable, and that is one of the very memorable things that came from that programme.

My direct answer to your question of whether financial issues are a consideration is yes. It is one of the reasons why I very much support term limits. In most other walks of life these days there are term limits. How long you are allowed to be a director on a board? How long you are allowed to be a trustee of an organisation? They all have term limits, and it seems to me that this is quite an effective way of dealing with this.

Q33 **Mr David Jones:** A brief question. Do retired peers continue to enjoy the facilities of the House of Lords?

Lord Burns: Yes.

Q34 **Mr David Jones:** So they enjoy the bars, the restaurants and so on.

Lord Burns: They could. As it happens I think there is very little use made of it by people who retire. This was a principle that was introduced when the hereditaries left, and it has been continued for people who retire.

Q35 **Dame Cheryl Gillan:** First of all, thank you very much for the work that you have carried out on this. It is a perennial problem. I was PPS to the Leader of the House of Lords back in 1994, and it was all that was discussed in those days—how we reform the House of Lords. I was quite surprised, though, that the report did not contain more of a qualitative analysis of the work carried out by the Lords and did not address cost, including the payment to Members of the House of Lords, which the Chairman has just touched upon. Was there any reason why you did not do that? It would appear that that could have been within your remit.

Lord Burns: Sorry, the first point was about the qualitative—

Dame Cheryl Gillan: Analysis of the work the House of Lords does. It makes a tremendous contribution to revising legislation and making the Commons think again, and indeed there may be Members of the Lords who are appointed for a specific reason. I keep thinking of Lord McColl, who was a distinguished surgeon, and Lord Winston, who do not contribute that often, but when they do contribute it is with expert knowledge on one subject, which is of vital importance to the running of the country.

Lord Burns: Those examples that you mentioned are now in the hands of the House of Lords Appointments Commission, because they are generally Cross-Bench Members who have come in on this basis. The House of Lords Appointment Commission goes through a very careful



process of looking at people who can make a contribution across a range of different disciplines and a range of different backgrounds and experiences. Not surprisingly, many of those people will not be there every day, but they will be there on occasions when their particular specialism can be of help to the Lords, and they very often make their contributions in Committees that are looking at things.

We were not asked to look, and did not look, at the powers of the House or at any of the mechanisms of the Committee structure or such like. We were taking those things as given, and we were dealing with a specific issue as to how we could solve the problem of the ever increasing size, and with it the growing cost and the resources that are needed as people need more desks and generally more support.

I do not think in the end the issue of the cost of the Lords is the decisive feature here. It is the concern of the crowding, the extent to which there are more people than one needs to do the job and the damaging picture of a House that is simply ever growing in size when its job seems to be unchanged.

Q36 Dame Cheryl Gillan: Did you, during the course of your inquiries, make any assessment or any inquiries as to what moving the House of Lords out of its current Chamber during restoration and renewal would mean? There is obviously speculation—

Lord Burns: The only thing is, we had some evidence that if we were to move out, the rate of retirements might well pick up. Indeed, we had in a number of people who more or less offered themselves for retirement if R&R was to go ahead.

Q37 Dame Cheryl Gillan: So it is possible if R&R goes ahead that that might be a by-product, and we may fall below your optimum number if things go—

Lord Burns: Yes. It may be that it leads to a mechanism that enables us to accelerate the—

Q38 Dame Cheryl Gillan: Do you think it would be sensible to canvass the current sitting Members of the House of Lords to try and estimate what percentage would take retirement?

Lord Burns: I have left it to the parties to try to assess what is feasible in this area. Nothing can happen in this whole area until we know whether or not the Government are prepared to support these proposals. The next and intensive stage of this work has yet to take place, which would be getting the parties to sit down and agree the numbers of target retirements and the shares that each of them are going to take in this. At the moment I have a suspicion that some of the parties are holding people back from retiring, because if this was to go ahead they want to have some people that they could offer quite quickly.



Getting clarity of this at this point is quite difficult. This will happen at the next stage. If the Government decided they wanted to pursue these proposals, the next step is to then get the parties together to come to an agreement about what the numbers would look like and what our targets would be. That can of course be changed as you go along if it turns out to be easier than was thought, but our proposal, as you know, is that the retirement should be equally spread across the parties in proportion to their existing size. It is the only fair way that we could find of doing this. We then have to have an agreement on those numbers, and that really is the next stage of the work.

Of course we do not know whether R&R is going to go ahead, so I read, and it is only when people have to make decisions on these things that you get them. The parties are the people who are actively looking at this in the Lords at the moment to see what numbers they can individually achieve. They have said to me that they are content with the numbers that we have proposed in general terms.

Q39 Dame Cheryl Gillan: I always worry about the way there seems to be an increasing trend of almost ageism in this day and age, and this worship of the cult of youth, whereas experience is really important. Somebody can make a valuable contribution in their 90s and maybe some people in their 50s and 60s may not make as valuable a contribution. Why did your Committee opt for a non-renewable fixed term of 15 years as being the answer? Surely you are running the risk—because you can go into the Lords at any age—of cutting people off and really being ageist.

Lord Burns: Interesting you should say that, because of course the main alternative runner to this was to have an age limit, and the reason we rejected the age limit was for the very reason that you outline. The problem about allowing renewable terms, and we did discuss it of course, is that there was a strong feeling among the Committee and the people who were quite close to all of this that this would begin to compromise the independence of the party members if they were in a sense put back into the hands of the Whips, who would be determining who was going to be reappointed. The average age of people arriving is 59; 15 years seemed to the group to be reasonable. We did look at 20, as the report outlines. In some respects 20 years has some advantages, but it has some disadvantages.

Q40 Dame Cheryl Gillan: Can I just press you on this? When you have a cut-off date of 15 years, supposing you have an eminent peer who is about to be able to contribute to a piece of legislation that is going to be examined by the House of Lords, if they have been thrown out at 15 years it might have been in the next 12 months or 18 months that they would really make a valuable contribution. Surely there should be some options or some mechanism considered so that there is a small possible extension, particularly to cover the skills and abilities of the individual Member of the House of Lords.



HOUSE OF COMMONS

Lord Burns: We have suggested there would be small extensions for people who were Ministers.

Dame Cheryl Gillan: I am not just thinking of Ministers.

Lord Burns: If it was small, I am sure that the parties could come to an agreement about this. One of the great strengths of the Lords is that people do have a greater degree of independence than they do elsewhere, and the members of the Committee were very concerned not to compromise that and to end up with people who had been currying political favour being the ones who are reappointed. Where you have individual exemptions, as you say, that I think is for people to work out at the time, although I find it really very odd to think about—if someone has been in the House of Lords for 15 years, what are the chances that it just so happens that it is the next 12 months or 18 months when their expertise is going to be particularly called upon?

Whether you can build flexibilities in this I think would be up to the parties at the time. We looked at the outset at whether people could be reappointed, and we had some sympathy with it, but the closer we examined this the deeper the problems we saw that it then creates.

Q41 **Dame Cheryl Gillan:** They could be in the middle of a Select Committee inquiry, for example, that went on for some time. There are all sorts of things. Just to have a complete cut-off at 15 years without having some mechanism that allows a little flexibility around that time—

Chair: Except for Ministers, of course.

Dame Cheryl Gillan: Which I think is also not recognising the true value of the House of Lords. It is not just in its ministerial culture but in the body politic that it contributes.

Lord Burns: We do offer one other opportunity, of course, which is that people should have the opportunity of taking a leave of absence for a period, which would not count towards their 15 years, so that if they were going through a period that was particularly busy in their work outside the House they could put their membership of the House on hold as one of the mechanisms for providing flexibility. Each time you provide flexibility in this type of situation, of course, the more people put pressure on others to use it. I have had this. I spent the last 20 years on a variety of boards where the very same issues arose, and the corporate governance people have decided—and I think it works jolly well—that exceptions should be truly exceptions and that the natural course of things should be not to expect exceptions.

Q42 **Dame Cheryl Gillan:** But for example if somebody was taken ill and needed to take one or two years off to recover, it would seem sensible to make that allowance, provided of course they said, “I would like to take this as leave of absence”.

Lord Burns: I am sure that could be accounted for.



HOUSE OF COMMONS

Q43 **Dame Cheryl Gillan:** Can I just ask how long you have served in the House of Lords?

Lord Burns: I am coming up for 20 years this summer.

Q44 **Dame Cheryl Gillan:** So under your rules you would no longer be with us?

Lord Burns: That is right. Looking back on my own career, I think if these arrangements had been in place there would have been a period when I would have taken a leave of absence, because I was very busy doing a lot of other things. If I had known at the outset that that was the situation, that I was going to be here for 15 years, I would have organised my life to make sure that I had given the appropriate time to it.

Q45 **Chair:** Can I just ask a technical question? If you take leave of absence, does that create a vacancy and the opportunity for the Prime Minister to make another appointment?

Lord Burns: Yes, but then that would—

Q46 **Chair:** Would that count as one of the two out?

Lord Burns: There would be one fewer in five years' time, because we are suggesting that people should take leave of absence for a five-year period so they should not just be dipping in and out for 12 months or so. We are not providing gaming opportunities.

Q47 **Chair:** On the problem of the taxis with their meters running, Baroness D'Souza suggested there might be 20 or 25 peers regularly practising this behaviour. How do your proposals deal with this problem? Presumably you all agree it is unacceptable.

Lord Burns: Of course. If you had a restriction and you had a cap on the size, my own view is that the parties would be rather more careful about whom they chose to appoint.

Q48 **Chair:** Why are they not careful now?

Lord Burns: Because you have a free pass.

Q49 **Chair:** So you think it would subliminally create a change of attitude and behaviour.

Lord Burns: Yes, I think the parties would be much more concerned to have people who were going to participate.

Q50 **Chair:** Why have you not organised your proposals to address this problem directly?

Lord Burns: The 15-year term itself will do this.

Q51 **Chair:** It will not affect any of the existing peerages, will it?

Lord Burns: No.



HOUSE OF COMMONS

Q52 **Chair:** How will it address this problem?

Lord Burns: It doesn't.

Q53 **Chair:** Why did you decide this was not—

Lord Burns: For the simple reason that there are no powers. Under this scheme where we are not using legislation, there are no powers to address this.

Q54 **Chair:** Your report is peppered with references to the reputation of the upper House. This, I would say, is one of your reputational risks.

Lord Burns: It is. That will work its way through over time. I have no sense as to whether or not the numbers you are quoting are correct. In some cases this may be people turning up to vote or whatever, so I do not want to comment on that. I simply make the point that we have no powers to make people leave as things stand, because of the life membership.

Chair: Okay. You have made your point.

Q55 **Kelvin Hopkins:** There has been one suggestion that future peer appointments might be linked to general elections. To what extent would this add legitimacy to the House of Lords?

Lord Burns: The way appointments currently take place is already effectively linked to general elections. If you look back historically, something like two thirds of the appointments that are made within any Parliament are made for the governing party, and about one third go to the Opposition. What we are doing here is formalising that process and how it works with a cap. We are basically trying to do something that is roughly speaking the way the system has worked in the past, but within the constraints of a cap on the numbers. We want to reflect the changing tide of political opinion over time, so that as parties rise and decline the number of people in the Lords would reflect that, but slowly. It would only take place over 15 years.

Q56 **Kelvin Hopkins:** Just a small comment. You said it is effectively that now, but one party, the Liberal Democrats, is enormously over-represented in the House of Lords compared with the House of Commons.

Lord Burns: Yes. They had a period where they were probably a bit under-represented, and on this formulation that we have proposed they are currently over-represented. Of course that would not happen under these proposals.

Q57 **Kelvin Hopkins:** If appointments were related to general elections, would it have some impact on the constitutional balance between the two Houses, giving more legitimacy, if you like, to the House of Lords?

Lord Burns: We are not trying to do that. This is all based upon all the existing conventions of the relationship between the two Houses remaining as they are. We do not want to tilt that in any way. As I say,



HOUSE OF COMMONS

the present position is that Governments of the day get more appointments to the House of Lords, and a Government that had more seats and more votes under our system would also get more seats to fill the vacancies, but I do not see that that changes any question of legitimacy. That is simply a method of following the tide of public opinion over a period of time. We do say in the report that the relative political balance between the two main parties under our proposals would not have been that different to what took place. The only difference is that under our proposals it would take place within a capped system, rather than under what is effectively a rising total size.

- Q58 **Kelvin Hopkins:** There is already widespread criticism of political appointments to the House of Lords, and I must say I am one of those strong critics myself. Is there a risk that the system your Committee proposes will make this worse? One concern for many of us, I think, has been that prime ministerial patronage has a perverse effect on the House of Commons, with people waiting their turn to get into the House of Lords and therefore toeing the line with the Whips, or whatever. Do you not think all of that has to be challenged?

Lord Burns: That was not an issue for my Committee. How the leaders of the parties make their appointments under this system is a matter for the parties. For the Cross Benchers it is done by the House of Lords Appointments Commission, but under these proposals the decision of who fills the vacancies that a party is entitled to becomes a matter for the parties. We are not changing that. We reduce the power of patronage for the Prime Minister under these proposals, of course, because under the present system they can propose any number that they wish to, and they would be constrained in that sense. But the Committee came to the view that the composition of their appointments should remain as it is at the moment.

- Q59 **Kelvin Hopkins:** You earlier set some store by the independence of members of the House of Lords, but for many of our party leaders and Prime Ministers, the last thing they want is independent members of the House of Lords who are going to cause trouble, so they appoint leadership loyalists, particularly in the safe seats when they want to get those safe seats to hand over to their friends. That is what has been happening over time; they do not tend to appoint leftists, for example.

Lord Burns: The House of Lords, of course, is one of those situations where you may be appointed for political reasons but once you are appointed that is that, in the sense that Whips no longer have any overriding influence over people, which is what causes this greater degree of independence. I observe this as I watch some of the party members. But how people come to be appointed has to be for the parties under these proposals. The only thing I offer you is that I think by having a constraint on particularly the Government being able to appoint any number that they wish to appoint, they will be more careful about who they appoint.



HOUSE OF COMMONS

Q60 **Kelvin Hopkins:** A simple point: I think I can give you a list as long as my arm of Members of Parliament during the Blair-Brown Governments who would never have been appointed to the House of Lords—even myself, I have to say.

Lord Burns: That is an issue about the appointed system. I and the Committee were asked to look at this on the basis that the House of Lords remains an appointed House. We are not making proposals to change it.

Q61 **Sandy Martin:** Very briefly, Lord Burns, if there is going to be this constraint on the number of people being appointed, does that not focus the minds of the Prime Ministers involved to make absolutely sure that when they do make appointments they are going to be people who are going to remain loyal to the party Whip? You only need to look across the pond at the way in which Presidents appoint to the Supreme Court, and the focus is absolutely on having somebody who, once they are there, will do what the President, or in this case the Prime Minister, wants them to do, because they only get a certain number of appointments.

Lord Burns: You say they will do what they want them to do, but the Lords is much more concerned about getting people to do the work and to engage in the process than it is about simply winning votes. The balance of votes in the end is not the most critical issue; it is about the quality of the contribution, it is about the work of people on Committees. It is about the scrutinising work that they do and it is about, above all, the judgment of people who have a lot of experience of either politics or other areas. My view is that they would be more concerned that they have people who are going to put their shoulder to the wheel and participate in the process than simply appointing names who may not show up.

Q62 **Mr David Jones:** Lord Burns, your report notes that you have some difficulty with the hereditary peers and bishops, given that you have decided to go down a non-legislative route. They would remain in the same numbers as at present, which would mean that about 20% of the House as constituted pursuant to these proposals, at the figure ultimately arrived at, would be either hereditary peers or bishops.

Lord Burns: Yes, 20%, 120 out of 600.

Q63 **Mr David Jones:** That is 20%, which is a very large proportion. Does that not give the impression of a very unrepresentative House in terms of UK society as we now know it?

Lord Burns: First of all, it is exactly the same balance that was there immediately after the rest of the hereditaries were excluded in 2000. If you look back at 2000, that was roughly speaking the size of the House, and those were the shares of the excepted hereditaries and of the bishops. It is not as if we are entering into an unknown world.



HOUSE OF COMMONS

My expectation is that over time something would be done about both of those and the size of their proportion. We have argued in the report that this is not the moment to try to do it. We should try to get the building blocks of this in place, and then it is for Parliament in the future to decide what to do about the hereditaries. There is a very simple way of dealing with the hereditaries, if Parliament wishes to do it, which is to end the by-elections and then gradually the numbers of the hereditaries will decline.

Q64 **Mr David Jones:** That would be perverse, because they are the only democratic element of the House of Lords.

Lord Burns: If you call being elected by your own group democracy, then—

Q65 **Mr David Jones:** I think it is a fairly vestigial democracy, but certainly more democratic than any other Members of the House of Lords who are all appointees.

Lord Burns: The other party Members of the House of Lords are people who have been appointed by people who have been elected.

Q66 **Mr David Jones:** Do you think that this may be now the time to grasp the nettle and address the question of legislating for the removal of the hereditaries, or at least stopping the by-elections?

Lord Burns: I want to keep this as a separate issue to the issue of our proposals, because then you enter into a world of a great deal of debate. There are hereditary members who believe they were given a promise in 2000 or 2001 about what would happen. It seems to me that it obscures the whole question of the proposals that we are making for this to turn into a debate about hereditaries. My own view is if we were to get these proposals in place, that would then provide the best basis for having a subsequent debate about the hereditaries and how many bishops there should be. From my point of view I would rather we did not try to deal with both of these things at the same time, because it will make the whole question a good deal more complicated.

Q67 **Mr David Jones:** It is just that it does seem rather disturbing that such a high percentage of the Lords, reformed as you propose in this report, should be hereditary peers or bishops.

Lord Burns: As I say, this was exactly the balance that there was in 2000 and 2001, when the rest of the hereditaries were removed. Parliament knew what they were doing in 2000 when they decided to continue with 92 excepted hereditaries and 26 bishops. This would return us more or less to the position that we were in in 2001. I am the last person to say that we should not be addressing the issue of the hereditaries and the bishops. It is just that the Committee decided that should be dealt with in the fullness of time rather than complicating this particular set of proposals.



HOUSE OF COMMONS

Q68 **Mr David Jones:** The report has accepted the current ratio of Cross Benchers to political appointments. Why did it come to the conclusion that it was the right ratio?

Lord Burns: The overwhelming feeling in the House is that the present ratio works very effectively. Indeed it has been, roughly speaking, the rate of appointments that has taken place from 1958 onwards when the life peerages were started. When you combine it with the fact that we are proposing that no party should have a political majority, it means that Governments have to work very hard to get their business through, and you get the advice and help of a lot of people who have particular skills from other walks of life.

Q69 **Mr David Jones:** In terms of other skills, you recommend, I think, that retired Supreme Court judges should serve for only seven years. Why seven for judges whereas it is 15 years for everybody else?

Lord Burns: They will not be joining until they retire, which is now fixed at age 70. If you do the arithmetic, then partly because of the reduction of the age of retirement, the flow of former Supreme Court judges who would be retiring would mean that the number of Cross Benchers who came from that group would increase in size. We did not want a situation where there was a decision made after the event as to which Supreme Court justices should be appointed to the Lords, because that really does interfere with their independence. We would like them all to be offered this opportunity, but in order to control the number that should be there at any one point they should have a shorter term. It is also to bear in mind that they will not be coming in until they are 70, and possibly even a bit later if they take some time off to do some further judicial work in other jurisdictions.

Q70 **Mr David Jones:** So the feeling was that Supreme Court judges could not soldier on until they were octogenarians, whereas—

Lord Burns: No, the main thing was the numbers. If you model the numbers, the pace at which they were going to be retiring, and they all did 15 years, then you would have ended up with a group that was larger than it has typically been in the past. We need to provide room for other places, for the Cross Benchers and the people from other backgrounds, rather than it being too heavily dominated by former Supreme Court justices.

Q71 **Chair:** Can hereditary peers take leave of absence?

Lord Burns: That is a very good question. Yes.

Q72 **Chair:** Can bishops take leave of absence?

Lord Burns: Yes.

Q73 **Chair:** I am getting contrary indications.

Lord Burns: They do not have to attend.



HOUSE OF COMMONS

Q74 **Chair:** But they cannot formally take leave of absence to reduce the numbers.

Lord Burns: No, bishops cannot. I think the legislation says there should be 26 bishops in the House of Lords, and indeed some of them are named.

Q75 **Chair:** It would need legislation to reduce the number?

Lord Burns: It needs legislation to change the number.

Chair: Some of the questions about diversity have already been answered. Dame Cheryl?

Q76 **Dame Cheryl Gillan:** Lord Burns, if 20% is going to be bishops and hereditary peers, that means 20% of the positions are going to be reserved for men.

Lord Burns: We do have some female bishops who are joining but—

Q77 **Dame Cheryl Gillan:** But they have not joined yet, have they?

Lord Burns: We have two.

Q78 **Dame Cheryl Gillan:** Okay, but it is still predominantly men, and hereditary peers are 92 of them.

Lord Burns: It is certainly true of the hereditaries, and this is a point that is now being made very strongly in the Lords as to why the by-elections should be ended, because otherwise I think the Countess of Mar said that she would be the last female who would come through that route.

Q79 **Dame Cheryl Gillan:** I think in the interests of gender balance all positions in the House of Lords should be open to men and women.

Lord Burns: Dame Cheryl, I hope I have made it quite clear I am not here to defend the position of the hereditaries. They regard that they were offered a deal back in 2000 by the Labour Government. The only question is whether we try to deal with the hereditaries simultaneously with these proposals or whether we separate them. The proposal of the Committee is that we should separate them, and I feel this very strongly, because there is no easier way of disrupting this whole process and preventing agreement taking place about doing something about the size of the House than to get involved in trench warfare over the question of the hereditaries.

I would point out in the report that the people who are going to suffer compared with the present position will be the Conservative party and the Cross Benchers, because they are the two groups that have almost all of the hereditaries. There is going to be pressure on both those groups, because the more hereditaries they have the less refreshment they can get in through life peerages.



HOUSE OF COMMONS

This must be a matter for another day. I am not saying it is not urgent; I am not saying it should not be done; but my present view is that it is important not to try to do these two things together. It has nothing to do with my views about the legitimacy of them or the consequences of it.

Chair: We have that point. Sandy Martin?

Q80 **Sandy Martin:** We had a piece of legislation passed, did we not, about the succession to the throne? How long did that take? It did happen, didn't it? It is not my imagination? I cannot imagine that there was much debate about it. I think everyone accepted it, and it would be quite difficult for the hereditary peers not to accept that what was good enough for the monarch is not traditional enough for them.

Chair: This is a proposal from a new Labour MP to end male primogeniture for the majority of the peerage. There are some peerages that do pass down the female line. The Middle Ages were quite modern in that respect.

Lord Burns: Yes, and for the Scottish I think there were some, but I am not sure that I would be going down the route of trying to modernise or legitimise the hereditary peerages at this point. There is an issue of the by-elections that has to be faced at some point, and my personal view is that it will be faced at some point. My only plea is, please not now.

Q81 **Chair:** There is another problem that most of the hereditary peerages tend to sit in the Conservative interest, and that rather limits who a Conservative Prime Minister could appoint.

Lord Burns: Correct. We make this point in the report—that up until now the hereditaries on the Conservative benches have in a sense been a free ticket. They have been an extra group of people who get added to the life peers. It has not mattered, because there has been no constraint on the total size. Once you put in place a constraint on the total size it will soon become evident that this group is restricting the scope for appointing life peers.

Q82 **Sandy Martin:** If you do not mind me saying so, Chair, I think that is the best part of this proposal, because it puts an enormous amount of pressure on a Conservative Government to have a more radical reformed House of Lords.

Chair: I am not going to comment, unless the witness wishes to comment.

Lord Burns: I will simply say that it will put some pressures upon them to examine the question of the hereditaries.

Q83 **Chair:** I do not think members of my Committee are allowed to cross-examine the Chairman in public. On the question of diversity, how do your proposals address the determined absence of the largest party in Scotland?

Lord Burns: It is basically an invitation to participate.



HOUSE OF COMMONS

Q84 **Chair:** They are not going to participate. What effect does it have on your proposals?

Lord Burns: It means that the House would be less than 600.

Q85 **Chair:** So there would be vacancies unfilled?

Lord Burns: Yes, there would be unfilled places.

Q86 **Chair:** How many places would that be roughly?

Lord Burns: It would be whatever the number is that they would be entitled to.

Q87 **Chair:** How many is that?

Lord Burns: It accumulates over time. It depends what has happened over the course of three general elections as to where you would get to after 15 years on the numbers that they would be entitled to. If it was starting now they would only get seats that would reflect the most recent general election. Over a 15-year period they would get up to their full complement, if they took it, so that is the average of their percentage of the national vote and their percentage of the—I have the arithmetic somewhere, I just don't have it in my head.

Chair: Perhaps you could drop us a note?

Lord Burns: Yes, I could tell you what they would be entitled to over 15 years.

Q88 **Chair:** If there were vacancies unfilled it would be quite tempting for a Prime Minister to fill them with other suitable appointments.

Lord Burns: No, under these proposals they would simply have to be left unfilled. The Prime Minister, under this agreement as we propose it, would not be able to fill them.

Chair: Sandy Martin?

Sandy Martin: You are not going to do anything more diverse than that?

Q89 **Chair:** I could ask you about the House of Lords Appointment Commission, and what role they will have in improving diversity of BME and women.

Lord Burns: They are already looking at this from the point of view of Cross Benchers. We are suggesting an additional role for them, but it is not one on diversity because, as I said earlier, I do believe that to be a matter for the political parties. What we are suggesting the House of Lords Appointments Commission should do is interview proposed party appointees as well, in order to explain to them what is expected of their role in the House. One of the things we have discovered is that people who come in through the party machinery very often have no idea of what is expected of them.

Q90 **Chair:** You are expecting under these proposals that new peers would



HOUSE OF COMMONS

sign an undertaking to retire after 15 years. What about signing an undertaking that they will turn up and participate in the legislative process of scrutinising the legislation?

Lord Burns: That is something for the parties to undertake. The Cross Benchers—

Q91 **Chair:** What about the House of Lords Appointments Commission setting a little examination of all the party appointees to see whether they are just title-seeking or whether they are going to participate?

Lord Burns: That, I think, is one of the things that they would do, but we are not proposing that they have any powers of veto over the party nominations. At the moment what they do with the Cross Bench people is that they go through this process with them and they get undertakings from them as to what kind of attendance they are likely to have. They cannot enforce that strictly, because they have no powers to do so, but they do monitor whether or not the people they have appointed are living up to what they had agreed.

Q92 **Chair:** What would happen to the regional diversity of the House of Lords under your proposals?

Lord Burns: That is a matter for the parties.

Q93 **Chair:** At the moment at least some of the hereditary peerages do come from different parts of the country, which is not where most of us Westminster villagers come from.

Lord Burns: The parties are going to have to think hard about this, because they will be held to account. Each of the parties are going to be held to account for the diversity of the people that they put into the House.

Q94 **Chair:** If you could explain to me how I could hold the Prime Minister to account for the appointments to the upper House that the Prime Minister may make, I would very much appreciate the advice.

Lord Burns: There is nobody else to blame. If there is a problem about diversity in the Conservative Members in the House of Lords, there is no one to blame for this other than the successive leaders of the Conservative party who have made those appointments.

Q95 **Sandy Martin:** One of the main aspects of this proposal, Lord Burns, is that it is practical and can be achieved without legislation. How quickly do you think these proposals could be implemented? You have put an 11-year timeframe on completing them, roughly, but how quickly do you think you could start that 11 years? The clock has not started ticking yet. What needs to happen in order to start making your recommendations take place?

Lord Burns: This could happen within months. There is no reason at all why we could not get started on this very quickly. What is required is now a signal from the Government that they are prepared to support



these proposals. The Labour party in the House of Lords, presumably with the agreement of their leadership, have said that if the Government is prepared to go ahead with these proposals they are willing to support them. The Liberal Democrats have indicated that they will support them in general terms. What we now need is agreement from the Government that they wish to pursue them. They have so far said that they were waiting to see whether there was a consensus in the House of Lords itself for these proposals. Well, as Lord Young pointed out two or three weeks ago, with 94 speakers and only 10 disagreements that is as much of a consensus as you could ever think of achieving within the House of Lords.

Much is in place now. If the Government were to agree—and it is a big ask of the Government, because it is the Prime Minister who is giving up the bulk of the patronage here—then we would need to bring the parties together to agree the precise rates of retirements that we are aiming for and agree to go ahead on that basis.

We have already been looking at the changes that would have to take place to the Standing Orders and the Code of Conduct within the Lords. I reckon if we got the signal to go ahead this could operate within two months.

Q96 Sandy Martin: We have already heard about the previous Prime Minister's pledge not to increase the number of life peers, or political appointments to life peerages, which was broken within months of having been made. How likely do you think it is that agreements to voluntarily follow this process of this code over an 11-year period, voluntarily entered into by all of the political parties severally and all of them together, and by all the people who have been appointed to peerages—because there will not be any legislative process for removing them from the peerage if they agree to stay on for only 15 years and then decide not to retire at the end of 15 years—will happen?

Lord Burns: On the last point that you raise, we believe that there are powers to enforce people leaving if they have signed saying that they will leave, because they would be in breach of the Code of Conduct and if you are in breach of the Code of Conduct you can get expelled from the House. I would not expect somebody who has given an undertaking that they will retire to then renege on that, but the powers exist. If someone has made that commitment the powers exist to expel them.

We have mechanisms in place that we have outlined in the report for situations where a party may want to do more or less retirements than is in the agreement because they would either get more or less appointments. There is a mechanism built in there for that. If a Prime Minister had once agreed to these proposals, the question is under what circumstances they might decide to say the agreement is off. That is something we can all have an opinion on.

The view of the Committee was that if a Prime Minister once went down this route it be very difficult for a Prime Minister then to say, "I am calling



HOUSE OF COMMONS

it off. I wish to appoint however many I wish to appoint". The political problems that would ensue from that would be significant.

We have mechanisms for adjusting it through time if people find it more or less difficult to meet their numbers. The key thing is whether Prime Ministers will continue to support it. If there is a general breakdown and the House of Lords behaves in a way that they feel makes the agreement unsustainable, then we are back to square one. Alternatively, there is the possibility some way down the road that if this arrangement worked and was seen to work and people were content with it then, of course, it could be put into legislation.

Q97 **Chair:** You told us what the consequences are of this not happening—that is, the House of Lords will continue to grow in size—but how serious is that consequence?

Lord Burns: I think it is a very significant source of the problem with the reputation of the House of Lords.

Chair: But the House of Lords was very much larger when it was full of all those hereditaries.

Lord Burns: Yes, but it was a very—

Chair: It is now significantly smaller than it used to be.

Lord Burns: But I think there is a big difference between the attendance rates and the likely attendance rates. When there were 1,300 or 1,400 the attendance rates were tiny.

Chair: The backwoodsmen did not tend to show up.

Lord Burns: Extremely low. They would show up on certain occasions that made them deeply unpopular. It is not the end of the world as things stand. Obviously it runs along, but do we really want to sit here and see a situation as the only Chamber in the western world without a cap whereby the numbers, let us say, started to rise and started to approach 1,000? Is this a happy prospect for Parliament? The place will not grind to a halt, because these things have their own ways of resolving.

Q98 **Chair:** How urgent is this, then?

Lord Burns: It is quite urgent, because we are sitting with a situation where the rate of appointment, until the present Prime Minister came into office and she has been quite restrained in her appointments, has been very high, certainly relative to the people who are leaving. There is a deep issue of reputation that is emerging there. There is certainly a feeling that members of the House have that this is an issue about reputation, and that is why they wish to do something about it.

It is something that they certainly cared enough about to both have the Committee set up and to debate it. I am in no doubt at all that the House as a whole would like something done about it, and they feel that it would lead to a more professional body that was clearer to the world about



HOUSE OF COMMONS

what its size was, what its composition was, how people were appointed and the contribution it would make. The only thing I would say is that there is a widespread view in the House that this is the last chance of doing anything this Parliament about these issues in the House of Lords.

Q99 **Chair:** But your entire proposal rests on the notion that a Prime Minister, presumably this Prime Minister, will apply to themselves a self-denying ordinance and that this will somehow become binding on future Prime Ministers.

Lord Burns: Yes.

Q100 **Chair:** How should we have any faith in that? Supposing you and I persuaded the present Prime Minister that she should adopt this, what incentive has she to do so not knowing who the next Prime Minister may be or from which party?

Lord Burns: I would seek to persuade her that if her party was to continue to be in office, this would provide sufficient scope to be able to do the job they need to do in the House of Lords. If, of course, they were in office it would mean they were the largest party, so they would be getting the largest share of the appointments.

If she thought that her party was not going to be in office at the next election then I would hope she would recognise that the likelihood then would be that there would be a very substantial inflow of people following that election in order to change the balance of the House, and we would see another ratcheting up in size. She has to give up some freedom of manoeuvre, but as it happens she has shown that she is quite cautious.

Q101 **Chair:** She is, but what about her successor?

Lord Burns: Then we have to ask ourselves a question. Under what circumstances would a future Prime Minister wish to take the risk of saying, "I do not like this arrangement whereby we have a cap on the size of the House of Lords; I wish to return to a situation where I can appoint simply as many people as I wish to appoint"?

Chair: We have had lurid threats not from the Prime Minister herself, of course, that somehow if the House of Lords defies the Government over some important matter then the upper House will be flooded with new peerages. I personally regard this as an unnecessary threat.

Lord Burns: It is a very quick way of becoming very unpopular.

Q102 **Chair:** But I think the House of Lords tends to behave responsibly and respects the democratic mandate that it does not have. But why should a Prime Minister give up that ultimate ability?

Lord Burns: Because the threat remains, Chairman. I do not think it could be any more powerful than the present threat, but the Prime Minister could say, "If the House of Lords is going to continue to behave in this very obstructive fashion, then the agreement is off."



HOUSE OF COMMONS

Q103 **Chair:** In fact, this is a proposal that does not lend itself to legislation. The idea that there should be legislation to implement this would be a mistake—that is what you are saying.

Lord Burns: We have not proposed there should be legislation.

Chair: But you have suggested that—

Lord Burns: I said it is one possibility; if people felt they wanted to go down that route they could do so. But there is nothing wrong in my mind with the situation we propose here whereby this is an agreed way forward. There is still an implicit threat from a Prime Minister.

Q104 **Chair:** You are saying that if there was legislation and that option was removed, it might affect the balance of power between the two Houses. It would give the Upper House more of a blank cheque to exercise the limited powers it already has.

Lord Burns: Chairman, I think you are in a better position than I am to come to a view as to whether you think this is a credible threat of flooding the House. Personally I can think of no quicker way of a Prime Minister becoming very unpopular than to say, “I cannot get my legislation through, so I am going to flood the place with appointments”.

Sandy Martin: I am sorry, but I cannot let that go. The power relationship between the House of Lords and the House of Commons was radically changed by Lloyd George precisely because he was able to make that threat and make it credible. If and when—and I believe it is when rather than if—we have a proposal for a fundamental reform of the House of Lords so we do not have a second Chamber that is primarily made up of appointees, then if the House of Lords tries to resist that, a similar threat might very well have the desired effect.

Lord Burns: There are a number of other differences in the Lloyd George—

Chair: Point made. I do not think there was a question in it.

Kelvin Hopkins: If the House of Lords did defy the will of the people on some particular subject, this would surely lead to a large proportion of the population demanding abolition of the House of Lords. That is the serious question.

Q105 **Chair:** That was another point. Do you wish to close our evidence session with some salient remarks, Lord Burns?

Lord Burns: My only remark on the comment that has been made by Mr Martin is that there are other people who know a great deal more about the history of the House of Lords than I do, but life was very different at the time of Lloyd George and there are now other mechanisms whereby Government get their own way.

I will repeat that this is a limited project. This is how to make the existing relationship between the two Chambers remain as it is, so that the



HOUSE OF COMMONS

general principles remain as they are and the worth of the House of Lords remains as it is, but that it takes place within a framework whereby there is a fixed number of people in the House of Lords, appointments are made in an objective way, people retire after they have served a reasonable term when they have had an opportunity to make their contribution, and there is room for refreshment without the average age of the House rising. It is to try to put it on to a more effective footing. That is all. We have no ambitions to change the role of the House of Lords or its relationship with the House of Commons, or to be obstructive.

Chair: Lord Burns, thank you very much indeed. It has been an interesting session, because there seems to be little public attention on these matters but plenty of public attention on what the upper House is discussing today. Thank you very much.

Lord Burns: Indeed. Thank you.