

Reforming the Lords: The Role of the Bishops

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Executive Summary

Of the 43 diocesan Bishops in England 26 have seats in the House of Lords, 5 ex-officio and 21 by seniority of appointment. Their number is limited by statute.

The Government's White Paper on Reforming the House of Lords proposes to retain the 26 Bishops in the transitional House of Lords. For the future it suggests the second chamber should reflect the multicultural nature of modern Britain, perhaps by representation of other religious bodies.

This Briefing considers whether the Church of England Bishops should continue to sit as legislators in the second chamber, and then explores the issues involved in the representation of other faiths. It sets out the arguments for and against in a balanced way to inform wider public debate.

Arguments for the Bishops remaining as legislators include that the Church of England is the established Church, and that Parliament continues to legislate for it. Arguments against are that the presence of the Bishops in Parliament is a hangover from the Middle Ages, like the hereditary peers; and that Parliament could legislate for the Church without the presence of the Bishops, or could cease to legislate for the Church altogether.

Clergy have been represented in other European parliaments - for example in France, Ireland, Spain and Sweden. That representation has disappeared with the modernisation of their constitutions. The UK is the only Western democracy in which the church is still represented in Parliament.

Other Christian denominations might not all wish to be represented in the second chamber: the Roman Catholic Church, for example, does not currently permit its priests to be members of secular legislative bodies. Some churches are organised on a congregational basis and do not have recognised leaders. Some churches might object to the representation of other churches.

Other faiths in the UK, with the approximate number of their adherents in brackets, are Islam (1.2m), Sikhism (400k), Hinduism (360k), Judaism (285k), Buddhism (25k). Not all have a central structure or are organised so as to enable them to provide hierarchical elected or appointed representatives.

The idea of 'religious representation' could give rise to many practical and numerical problems. It is debateable whether the 26 Bishops in the House of Lords are 'representative' of the Church of England. If the idea is pursued, it might be better to think in terms of 'voices' to 'reflect' the multi-faith nature of modern Britain.

The Annex to this Briefing sets out the established status of the Church of England and the Church of Scotland.

Background

- 1 In Chapter 7 of the White Paper on Reforming the House of Lords paragraphs 21 and 22 set out the Government's views on religious representation, which may be summarised as:

the Government does not propose any change in the transitional House of Lords in the representation of the Church of England within the House. It proposes to retain the present size of the bishops' bench, which it accepts is justified;

- there is a case for examining the position of the Church of Scotland which is an established church but has never had representation as of right in the second chamber;
- the House of Lords should reflect more accurately the multicultural nature of modern British society in which there are citizens of many faiths, and of none. But at least at first, other religious representation will not take the form of providing regular representation such as is enjoyed by the Church of England; and
- for the longer term, consider if there is a way of overcoming the legal and practical difficulties of replicating that regular representation for other religious bodies.

Scope of this briefing

- 2 This paper aims to set out the factors bearing on any changes which may be made to the present arrangements for religious representation in the House of Lords, including:
 - A. the issues involved in the question whether bishops of the Church of England should sit as legislators;
 - B. the issues involved in the question whether the Church of Scotland should be represented in the House of Lords;
 - C. the questions which arise in relation to the representation of other Christian denominations and other faiths;
 - D. religious representation generally, including the number of legislators, geographical coverage, and representativeness;
 - E. representation of the churches in other democracies; and
 - F. the implications for the House of Commons of religious representation in the House of Lords.

Annex

- 3 The Church of England and the Church of Scotland are, in different ways, established churches, and the Annex to this paper sets out in summary form the

constitutional relationship between those churches and the State under the following headings:

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The Church of England is a law-making body. It submits Measures to Parliament which can be rejected, but not amended, and which if accepted have the force of an Act of Parliament. No government Minister has direct responsibility to Parliament for the substance of Church legislation. The bishops in the House of Lords are (apart from the Second Church Estates Commissioner in the House of Commons) the only ex-officio voices which the Church, as a law-maker, has in Parliament. If they were removed, it might be necessary to revisit the Enabling Act, the statutory settlement under which Church legislation is currently handled.

9 *Other legislation*

The bishops take an active part in all aspects of the work of the House of Lords. In some cases the bishops have a direct interest in non-Church legislation; for example, the Church is a major provider of school education. In other cases, they contribute to debate from a broad base of ethical and religious concerns. That is sometimes welcomed by other denominations and faiths as a way of keeping spiritual matters on the national agenda. It is arguable that, with their diocesan bases, the bishops are the nearest the House of Lords has to members with a constituency.

10 *Church and State: Establishment*

The presence of the bishops in the House of Lords is neither a necessary nor a sufficient condition for its status as an established church, but it is a significant element in establishment in England. Church and State are entwined in complex ways in the fabric of the nation and can be said to bestow some legitimacy on each other. These elements are set out in the Annex, as are the arguments that might be deployed if the reform of the House of Lords were to trigger a debate on disestablishment.

Factors against the bishops as legislators

11 *History*

It could be said that since

There is no direct functional connection between the fact that bishops sit in Parliament, and the fact that Parliament passes legislation for the Church. Parliament used to deal with Church legislation on the same basis as all other Bills until its role was substantially reduced by the Church of England Assembly (Powers) Act 1919. In theory Parliament could by means of primary legislation - whether or not the bishops continued to sit - either increase the extent to which it can now intervene in Church legislation; or cease to be involved altogether. Either course would, however, be controversial and the latter might be regarded as disestablishing the Church.

13 *Other legislation*

Lay members of both chambers of Parliament, some of whom have strong religious affiliations, are well able to - and do - articulate ethical, moral, religious and spiritual concerns in debate.

14 *Church and State: Establishment*

Removing the bishops from the House of Lords would not of itself affect the established nature of the Church, but it might trigger a debate on disestablishment. The Church of Scotland is established, but has no formal presence in Parliament.

15 *Representativeness*

Although the bishops as legislators express ethical and moral concerns which may be shared by other denominations and faiths, they do not in any formal sense represent religion in general. The White Paper refers to "the present representation" making it possible "for the Church to ensure its perspective is represented". It can be argued that the bishops are not in any sense "representative" of the Church of England and that the Church is not democratically enfranchised by the presence of the bishops in the legislature. The Church of England does not choose or vote for its bishops: they are appointed by the Crown on the advice of ministers. It does not choose or vote on which 26 of the 43 diocesan bishops should go to the House of Lords: they sit by seniority. In geographical terms, the bishops represent England only; and only 26 of the diocesan areas.

16 The bishops are not in any sense mandated either by the General Synod or their dioceses, or bound to agree with or represent their views. Authority within the Church of England is dispersed and each bishop in the House of Lords speaks and votes as he thinks fit. Although women can be ordained in the Church of England only men can be bishops, so it could be argued that bishops do not even "represent" the priesthood.

17 These factors raise questions about the meaning of "religious representation" as used in the White Paper, and how it is to be applied to other denominations and faiths (see paragraph 52, below).

B. Should the Church of Scotland be represented in the House of Lords?

- 18 The presbyterian Church of Scotland is the established church in Scotland (see Annex). The Sovereign swears to protect it, and when in Scotland the Sovereign is a presbyterian. In England, Church and State are engaged in a complex set of inter-

Factors against the representation of the Church of Scotland in the House of Lords.

24 Church of Scotland Act 1921

The Church of Scotland Act 1921 is within the scope of the Scottish Parliament, though the rest of the Queen Anne settlement is not. Giving the Church of Scotland seats in the United Kingdom second chamber might seem to conflict with the spirit and purpose of the 1921 Act, which in effect recognises and endorses the patriation of the constitution of the Church of Scotland and affirms its pre-existing independence. (It is in that sense that it is "established".)

25 Geographical problems

Representation in the second chamber might entail the risk of creating another version of the West Lothian question with the established Church of Scotland having for the first time a voice and votes on matters which do not affect Scotland. It might also give rise to calls for religious representation for Wales, which will continue to be much more directly affected by the work of the Westminster Parliament.

C. Representation of other Christian denominations and other faiths

26 The position of other Christian denominations and other faiths in the United Kingdom varies greatly. This brief seeks only to identify some of the non-religious issues which will need to be addressed in relation to their possible representation in the second chamber of Parliament.

Other Christian denominations

27 The White Paper refers to the bishops, to the Church of Scotland and to other faiths, but not to the other Christian denominations. It seems likely, however, that those denominations would wish their interests to be taken into account. The Christian denominations might broadly be described as Roman Catholic, Anglican and non-conformist. The Anglican Church is established in England and its bishops sit in the House of Lords; but it is no longer established in Wales, Scotland and Ireland and bishops from those Provinces do not sit in the House of Lords. No other religious body has a seat as of right in either chamber of Parliament.

28 It would be necessary to ascertain which Christian denominations wished to be represented in Wales, which would be non-represented.

- 29 Some denominations might regard themselves as so distinct from the rest of Christian society as to merit a separate voice. Some Christian denominations are in communion with each other. The Church of England and the Methodist Church, for example, are engaged in long term discussions about possible unity. Other denominations have histories and doctrines which form barriers to closer relations. It is possible that some Christian churches would regard themselves as compromised by involvement with the State. Some would be reluctant to accept non-trinitarian churches such as the Mormons and Jehovah's Witnesses as Christian denominations to be treated on an equal footing with others.
- 30 The Roman Catholic Church does not at present permit its priests to be members of secular legislative bodies, which would form a real barrier to seeking parity of representation between the Christian churches.

Other faiths

- 31 The White Paper says that considering whether there is a way of overcoming the legal and practical difficulties of replicating for other religious bodies regular representation in the second chamber, such as is enjoyed by the Church of England, should form one of the issues for examinat

35 *Judaism*

There are an estimated 285,000 adherents of Judaism in the United Kingdom. A synagogue is led by a group of laymen who are elected to office. The Rabbi is primarily a teacher and spiritual guide. The Chief Rabbi of the United Hebrew Congregations of the Commonwealth is the rabbinical authority of the Orthodox sector of the Ashkenazi Jewish community. His authority is not recognised by the Reform Synagogues of Great Britain (the largest progressive group) or by other congregations, but he is generally recognised both outside the Jewish community and within it as the public religious representative of the totality of British Jewry.

36 *Sikhism*

There are about 400,000 adherents in the United Kingdom. It is not recognised by the Government. It is recognised by the British Sikh community.

41 *Gender*

Some faiths (eg the Church of England) do not permit women to hold high office, so some thought will have to be given to the gender balance among religious representatives, and its effect on the gender balance in the second chamber as a whole. It would have to be established whether it was acceptable to seek religious representatives other than from among the holders of high office within each faith.

42 *Control*

Representativeness

52 Paragraphs 15 to 17 above set out arguments to suggest that

Conclusion

60 This brief has sought to provide material to help people evaluate the options facing the government in relation to religious representation in the second chamber. Broadly these might be summarised as follows:

Option 1: Retain the status quo

61 This would leave untouched the present position of the 26 bishops in the upper chamber, with no formal representation for other faiths. The arguments for this position would rest largely on the established nature of the Church of England and the difference between that and the established nature of the Church of Scotland (as set out in the Annex). The brief sets out some of the difficulties which would be involved in finding a basis of representation for other denominations and faiths.

Option 2: Include all religious faiths

62 This would involve considering the representation of the Church of England on the same basis as any other faith or denomination in the United Kingdom. The brief describes some of the practical and other difficulties involved in securing true "representation" from religious bodies; an alternative might be to plan in terms of finding "voices" to "reflect" the multi-faith nature of modern Britain.

Option 3: Remove the bishops

63 Removing from the Bishops of the Church of England their ancient right to sit in the House of Lords would bring to an end all formal religious presence in the upper chamber. It would in some ways be comparable with the removal of the hereditary peers' right to sit. It would not of itself disestablish the Church of England but it would bring in its train a string of complications related to establishment (these factors are set out in the Annex); and might reopen the debate about disestablishment.

- 6 Unlike the Law Lords, who are also members by virtue of office, bishops do not remain members of the House of Lords for life but only for so long as they continue to be diocesan bishops. Bishops are therefore the only truly ex-officio members of the chamber. The retirement age for bishops is 70. Retired bishops who have sat in the House of Lords are entitled to continue to use the facilities of the House and may (as may diocesan bishops who have not yet seats in the House; and the Dean of Westminster) enter the Chamber to listen to debates from the steps of the Throne.

The State's role in the Church of England's legislation

- 7 The original legislative bodies of the Church of England were the Convocations of Canterbury and York, which have greater antiquity than Parliament. They are entirely clerical bodies and had the right to tax the clergy and to make Canons, which were binding on the clergy. The Convocations can meet only if summoned by Royal Writ, and could only promulge Canons after receipt of the Royal Assent and Licence. Although they no longer have power to make Canons, the Convocations still exist and meet. Under the Church of England Convocations Act 1966 the Queen is required to summon new Convocations as soon as may be convenient after the dissolution of the old so Convocations can no longer - as they were in the eighteenth century - be suspended. Clergy become members of the General Synod through being elected as Proctors in Convocation, so the General Synod could not meet unless the Convocations were first summoned by Royal Writ.
- 8 The Church of England Assembly (Powers) Act 1919 (usually known as the Enabling Act) gave the Church of England a wide measure of self-government. Before that, only Parliament could legislate for the Church. The Church of England Assembly was in 1970 replaced by the General Synod, which comprises three Houses. The House of Bishops (ie the Upper Houses of the two Convocations) consists of all the diocesan Bishops, together with nine elected suffragan bishops. The House of Clergy (ie the Lower Houses of the two Convocations) consists of representative and ex-officio members including, for example, three armed services chaplains and the Chaplain General of Prisons. Members of the House of Laity are elected by the lay members of deanery synods in each diocese.
- 9 The General Synod has very substantial powers. Not only can it make Canons, submitting them through ministers for Royal Licence, and pass Acts of Synod; it can propose Measures - statute laws - on any matter concerning the Church of England. Measures may amend or repeal Acts of Parliament. Measures must be laid before both Houses of Parliament, which cannot amend them but must either accept or reject them. These laws which the General Synod proposes, subject only to a veto by Parliament, have the same force as Acts of Parliament and their validity cannot be questioned in any court of law.
- 10 The procedure for handling Measures in Parliament reflects this delegated structure. The Ecclesiastical Committee, a statutory joint committee of both Houses of Parliament established under the 1919 Enabling Act, is by that Act required to state

its views on the expediency of a Measure "especially with relation to the constitutional rights of all His Majesty's subjects".

- 11 Measures are introduced in the House of Commons by a Member of Parliament who has been appointed by the government as Second Church Estates Commissioner. (He also answers for the Church Commissioners, with his own slot for Parliamentary Questions, in the Commons which alone of the two chambers may deal with such financial matters.) In the House of Lords, Measures are introduced by a bishop. In practice, the Ecclesiastical Committee never has a bishop among its members. A Measure is presented with the Ecclesiastical Committee's views on it, which are first seen in draft by the Legislative Committee of the General Synod, which may at that point withdraw the Measure if it so wishes.
- 12 For the purposes of internal government, it has become settled that the Church should have the initiative in proposing legislation, and that an unamendable Measure is the appropriate vehicle. At times of controversy, however, such as over the ordination of women, the argument is still sometimes rehearsed that major changes should be made by way of a Bill, which would bring the matter more fully within the purview of Parliament.

the Church of England; and on accession to make a declaration, now in the form prescribed in the Accession Declaration Act 1910, that he is a faithful Protestant and will uphold the enactments securing the Protestant succession to the Throne. The Sovereign may not marry a Roman Catholic.

The presbyterian Church of Scotland is the established church in Scotland. The

written constitution it is difficult to tinker with one part of the system without damaging others. Constitutional monarchy works largely because the office-holder is consecrated to duty, self-sacrifice and obedience to God; it makes little sense in other terms and it is not wise to undermine it.

- 33 The establishment of the Church gives a religious dimension to public life and keeps spirituality on the national agenda. The presence of the Bishops in the House of Lords institutionalises the articulation of the Christian ethic in legislative debate. This also benefits other churches and other religions. The standing of the Church allows it to have some political influence, usually on behalf of the marginalised in society. By virtue of being established the Church serves a much wider constituency than is represented in the General Synod. The assertion that society is now secular is unproven; there is a need for a national church for all the people.
- 34 It might also be argued that a State which publicly endorses and protects the beliefs of an established church has a legitimate interest in any changes made to the institution, so ultimate parliamentary control is justifiable. The Queen is Supreme Governor by virtue of being Head of State; as a constitutional monarch she can act only on the a9gt