House of Lords reform

1 Setting up a new Supreme Court for the United Kingdom

1. The Government announced on 12 June that it intended to consult on the establishment of a new Supreme Court for the United Kingdom. This is part of its continuing drive to modernise the constitution and public services. The intention is that the new Court will put the relationship between the executive, the legislature and the judiciary on a modern footing, which takes account of people's expectations about the independence and transparency of the judicial system. There have been a number of calls for such a change in recent years, for example by the Senior Law Lord, Lord Bingham of Cornhill, in his Constitution Unit Lecture in May 2002, in which he said "Our object is plain enough: to ensure that our supreme court is so structured and equipped as best to fulfil its functions and to command the confidence of the country in the changed world in which we live". The Chairman of the Bar Council, in an article in The Times on 2 April 2003, said "Judges should have no part of the legislature .... It is very difficult to understand why our Supreme Court (the law lords) should be a committee of the second house of Parliament".

Why change?

2. The functions of the highest courts in the land are presently divided between two bodies. The Appellate Committee of the House of Lords receives appeals from the courts in England and Wales and Northern Ireland, and in civil cases from Scotland. The Judicial Committee of the Privy Council, in addition to its overseas and ecclesiastical jurisdiction, considers questions as to whether the devolved administrations, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly are acting within their legal powers. Both sets of functions raise questions about whether there is any longer sufficient transparency of independence from the executive and the legislature to give people the assurance to which they are entitled about the independence of the judiciary. The considerable growth of judicial review in recent years has inevitably brought the judges more into the political eye. It is essential that our systems do all that they can to minimise the danger that judges' decisions could be perceived to be politically motivated. The Human Rights Act 1998, itself the product of a changing climate of opinion, has made people more sensitive to the
issues and more aware of the anomaly of the position whereby the highest court of appeal is situated within one of the chambers of Parliament.

3. It is not always understood that the decisions of the 'House of Lords' are in practice decisions of the Appellate Committee and that non-judicial members of the House never take part in the judgments. Nor is the extent to which the Law Lords themselves have decided to refrain from getting involved in political issues in relation to legislation on which they might later have to adjudicate always appreciated. The fact that the Lord Chancellor, as the Head of the Judiciary, was entitled to sit in the Appellate and Judicial Committees and did so as Chairman, added to the perception that their independence might be compromised by the arrangements. The Human Rights Act, specifically in relation to Article 6 of the European Convention on Human Rights, now requires a stricter view to be taken not only of anything which might undermine the independence or impartiality of a judicial tribunal, but even of anything which might appear to do so. So the fact that the Law Lords are a Committee of the House of Lords can raise issues about the appearance of independence from the legislature. Looking at it from the other way round, the requirement for the appearance of impartiality and independence also increasingly limits the ability of the Law Lords to contribute to the work of the House of Lords, thus reducing the value to both them and the House of their membership.

4. The position of the Appellate Committee as part of the House of Lords has inevitably limited the resources that can be made available to it. Space within the Palace of Westminster is at a premium, especially at the House of Lords end of the building. Although the facilities for hearings in Committee rooms 1 and 2 are good, the Law Lords' administration works in cramped conditions: one law lord does not even have a room. The position in the Palace cannot be improved without asking other peers to give up their desks. A separately constituted Supreme Court suitably accommodated could ensure that these issues were properly addressed.

5. In proposing that the time has come to change these arrangements, no criticism is intended of the way in which the members of either Committee have discharged their functions. Nor have there been any accusations of actual bias in either the appointments to either body or their judgments arising from their membership of the legislature. The arrangements have served us well in the past. Nonetheless, the Government has come to the conclusion that the present position is no longer sustainable. The time has come for the UK's highest court to move out from under the shadow of the legislature.

6. The Lord Chancellor has had an important role in preserving judicial independence. The Secretary of State for Constitutional Affairs will have a continuing responsibility for this vital safeguard. He will, both
within Government and publicly, be responsible for defending judicial independence from any attack. As noted in the consultation paper Constitutional Reform: A New Way of Appointing Judges, consideration should be given to whether that responsibility should be embodied in statute setting up the proposed new Judicial Appointments Commission.

7. The Government believes that the establishment of a separate Supreme Court will be an important part of a package of measures which will redraw the relationship between the Judiciary, the Government, and Parliament to preserve and increase our judges’ independence.