

Executive Summary

There is a dual crisis in British politics requiring radical solutions. People have become alienated from the political process: they are less likely to vote, more likely to express disillusionment with politics and politicians, and often feel powerless to change things. At the same time the Government is systematically undermining fundamental rights and freedoms.

This paper outlines proposals for restoring confidence in the political process, involving more people more often in decision-making that affects their lives and overhauling the way that government and Parliament works to make them more open and accountable to the people they serve. In short, it is about making government for the people, by the people. The Liberal Democrats are the political party with the best and most comprehensive package of radical measures to achieve this.

- **We would involve the British people in producing a written constitution.** This would reform and reinvigorate the democratic process, putting individuals back in control instead of the wealthy, large businesses and the unions. Our aim throughout would be to establish and guarantee the sovereignty of the people. We would give people the power to determine this constitution (setting out individual rights and limiting the power of the state) in a convention made up of members of the public and parliamentarians of all parties and none. There would be a referendum in the first year of a Liberal Democrat government asking people whether they agree with the principle of a written constitution and the proposed process for producing this. We would also introduce the Single Transferable Vote (STV) system for elections to the House of Commons, introduce fixed parliamentary terms of four years and lower the voting age to 16.
- **We want to see more opportunity for active citizenship and decisions taken closer to the people they affect.** We would make greater use of participatory methods of consultation e.g. citizens' initiatives (which would be empowered to insist that Parliament examines particular issues when a petition for it has secured the support of 2% of the registered electorate), or citizens' juries (which could examine particular areas of public policy). We would also restore to local Councils the financial and political capacity to determine priorities for their communities and ensure decisions are taken as closely as possible to the people they affect, including a redistribution of powers from Westminster and quangos to accountable, decentralised government across the UK.
- **We would restore the balance of power between the citizen and the state, reasserting individuals' rights and freedoms.** Over recent years the Government has systematically eroded the civil liberties of all, appearing to believe that good people don't need human rights and bad people don't deserve them. We believe that protecting Britain's security is crucial, but protection of our society against the threat of terrorism should not entail eroding and undermining the very values we seek to defend. For this reason we propose to outline core civil liberties and individual rights – as embodied in the European Convention – for protection under the written constitution we advocate for the UK. Liberal Democrats believe that for citizens genuinely to keep the state in check, they must be able to access information regarding its decisions and actions. We oppose Government proposals to make it easier for public bodies to

withhold information requested under Freedom of Information (FOI) and would instead take measures to improve the accessibility of officially held information. Under Labour the individual's right to privacy has also been severely compromised. Among other things we would scrap the Identity Cards Act 2006 and with it both the identity card scheme and National Identity Register.

- **We would modernise political institutions to make them more responsive.** We want to see the House of Lords replaced with a wholly-elected Senate, using STV to choose a third of the chamber every four years, for a single non-renewable term of twelve years. We would also place limits on spending by political parties outside elections; removing some of the funding by private individuals in favour of limited, public financing of political parties, used to encourage local campaigning. Voters would be able to nominate a local party (or none) to donate funding to rather than the central party HQ; and contributions made by trade union members would be subject to a clear and transparent process linking the intention of the member to the destination of the donation.
- **We would empower Parliament.** We would reinforce the dependence of the government on Parliament (and specifically the confidence of the House of Commons) for its authority and legitimacy, replacing the current concept of the sovereignty of the *crown* in Parliament with one of the *people* in Parliament. We would insist that a new government, following a general election, only takes office when the House of Commons has approved its programme, removing its dependence on royal appointment. We would give select committees greater involvement in the delineation of departmental responsibilities and priorities, with cross-examination of new Secretaries of State by departmental select committees before they take office. We would also vest in Parliament the outdated Royal Prerogative powers, such as the current war-making power of the Prime Minister.

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1. Introduction: The Nature of the Crisis

- 1.0.1 Democracy in Britain faces a dual crisis: too many people have become alienated from the political process and the fundamental rights and freedoms inseparable from democracy are under threat, no longer respected by government.
- 1.0.2 In recent years voter turnout has declined significantly and voter disengagement has become commonplace. The press and public express profound disillusionment with politicians and the political process. A feeling of remoteness is also a cause of alienation, with British citizens increasingly frustrated by the fact that they wield so little influence. With the current electoral system, and so few marginal seats, many feel their vote doesn't count.
- 1.0.3 This sense of alienation is fuelled by people's negative experiences of national and local government agencies, and negative perceptions of processes established for monitoring and rectifying breakdowns in the system, which are often seen as manipulated to suit the purposes of the Government. In essence, people no longer believe that our democracy produces government for the people or by the people.
- 1.0.4 At the same time, the Government's increasingly authoritarian response to the threats to Britain's security (since 9/11, the war on terror and the 7/7 bombings) and the perceived rise in crime and antisocial behaviour, threatens to erode the civil liberties of all. The Government's response appears to be based on the premise that good people don't need human rights while bad people don't deserve them. The defence of the realm from terrorist attack is crucial, but so are the civil liberties that are essential to the democracy we are trying to defend and enhance.
- 1.0.5 In addition, the system of government in the UK is not easy for citizens to understand – or for democrats to defend. Britain's constitution still reflects elements of mediaeval monarchy. Prerogative powers are exercised by ministers acting on behalf of the monarch in committing forces abroad and signing treaties. Executive, legislative and judicial powers still overlap, with governments able to exert excessive influence over Parliament, over judicial appointments, and over decisions to prosecute in major cases. Inadequately checked executive power makes for rushed ministerial decisions and ill-considered legislation.
- 1.0.6 As Liberal Democrats, our commitment to empowering the British people and protecting civil liberties is central to our approach to better governance. Existing party policy, as laid out in policy papers *Reforming Governance in the UK* (2000) and *Protecting Civil Liberties* (2001), is already strong in the areas of constitutional reform and civil liberties. However, recent developments make it timely to develop our policy further in a number of areas.
- 1.0.7 A working group was established in Autumn 2006 to look at the problems outlined above and other key issues related to the health of our democracy. The group published a consultation paper in January 2007, accompanied by dedicated web pages at www.consult.libdems.org.uk. A consultative session was held at the Party's spring conference in March 2007 and since then the group has held a series of evidence sessions and considered submissions from think tanks, pressure groups, party members and concerned individuals. This paper outlines policy proposals developed by the working group in light of its deliberations.

2. A Modern Constitutional Settlement

- 2.0.1 The Liberal Democrats' answer to the dual crisis highlighted in the introduction is a radical one. We believe the UK needs a new constitutional settlement, one that is designed for citizens in a pluralist 21st century society.
- 2.0.2 The current British constitution continues to concentrate too much power in the hands of too few people, and there are not enough limits on the use of this power. The Government retains powers originally in the hands of our medieval kings and queens, and can be just as unaccountable in their use. In practice, by exercising the Royal Prerogative, the Government has the right to take us to war, make treaties and appoint the head of the worldwide Anglican Communion. Even with the establishment of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly, many powers continue to be held in Westminster, and Whitehall has considerably more powers over our local authorities than its counterparts in other western democracies.
- 2.0.3 From being a model of how the executive could be constrained, the UK is now peculiar in the western world in the scale of action the executive can take if it commands a parliamentary majority. The lack of limits on the power of the government of the day means individual freedoms, which took centuries to win from government, are being eroded under the pretext of protecting the nation's security.
- 2.0.4 Our current constitutional arrangements no longer provide for good government or good governance;¹ quite the opposite, as can be seen with the increasing amount of poorly-thought-through legislation passing through Parliament. The current arrangements are neither in the interests of individuals nor of our democracy.

2.1 A Written Constitution

- 2.1.1 We believe Britain needs a new constitutional settlement which defines and limits the power of government. Liberal Democrats believe that such a settlement must give the highest priority to the protection of individual rights, to giving individuals control over their lives and to empowering local communities to manage their own affairs. Such a settlement requires a written constitution. Our existing constitutional arrangements are haphazard and depend on trusting government to respect democracy, to comply with constitutional conventions and to sustain our fundamental rights and freedoms. The argument that governments can be trusted to observe conventions, and that an unwritten constitution gives our system desirable added flexibility, has outlived its time. Conventions are largely unwritten rules, which are unenforceable and changeable at will. A constitution which is too heavily dependent upon them is as hazardous as it is undemocratic. There is of course utility in deliberately keeping subsidiary rules about political relationships between and within governmental institutions out of the courts, examples being the conventions governing the conduct of parliamentary business between the parties. The fundamental rules of the system should, however, be justiciable.

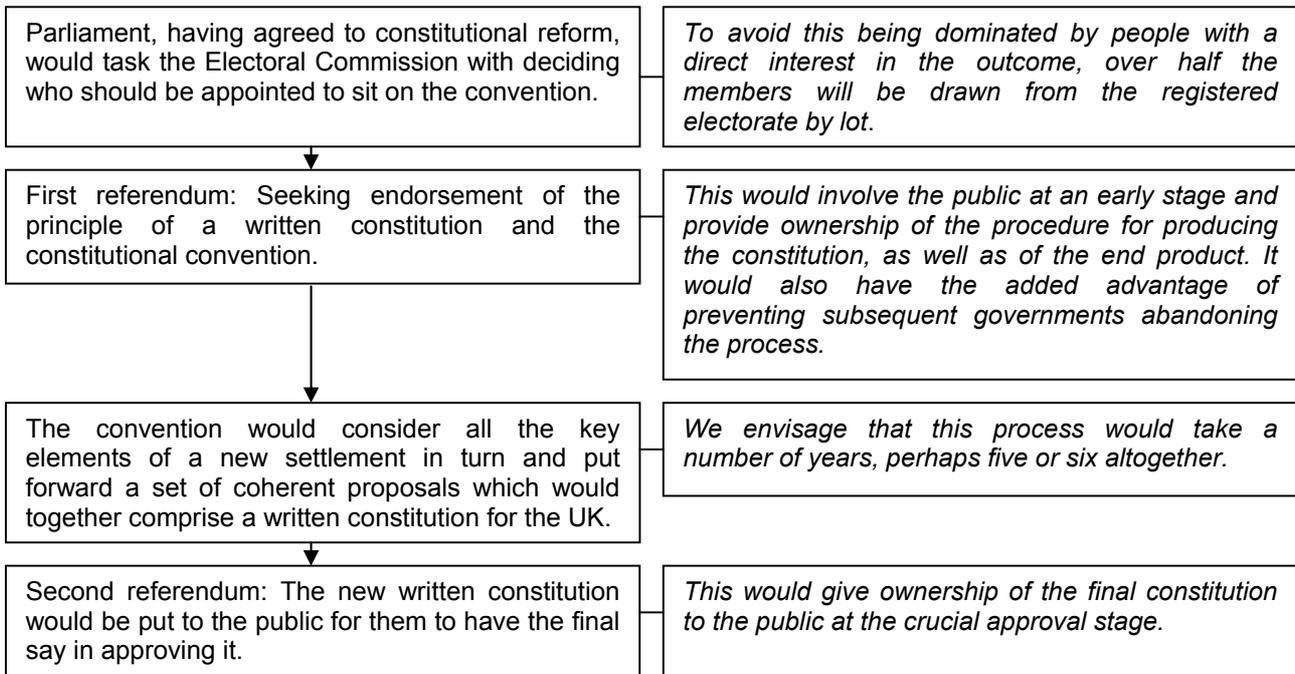
¹ In this paper we use the word 'government' to mean the executive, or the group of members drawn from the controlling Party in the House of Commons, which is responsible for the day-to-day management of the state; we use the word 'governance' to mean the processes or systems in place for the management of the country.

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- 2.1.2 A written constitution will have the advantages of clarity and democratic legitimacy. It will also enshrine the values and principles upon which our democracy is based in a law of greater status than other substantive legislation. A written constitution will be entrenched, so that Parliament will not have the power to amend it by simple parliamentary majority. Entrenchment offers the guarantee that governments cannot usurp power by using their position to undermine constitutional norms and restrict or remove individual freedoms which should be inalienable.
- 2.1.3 Liberal Democrats believe that in a true democracy it is essential that the constitution be genuinely in the ownership of the people. That ownership would be realised if amendment required the endorsement of the electorate. Amendment of the constitution should therefore require an enhanced majority in each House of Parliament – we would regard two thirds as appropriate – and endorsement by a majority of those voting in a referendum.

2.2 Process for Agreeing the New Constitution

- 2.2.1 According to a recent poll for the Joseph Rowntree Reform Trust, 68% of people think that Britain should have a written constitution. Liberal Democrats agree. We also believe, however, that this new constitution should not just be a matter for politicians to write and impose from on high. Its creation should be a process which involves the citizens whose lives it will affect. Without such public involvement, any constitutional changes could be undermined from the start by their lack of legitimacy.
- 2.2.2 We see the constitutional convention in Scotland in the 1990s as a successful model for greater participation in the process of constitutional reform – bringing together people from all political parties, as well as those with no political affiliation, to draw up proposals. Based on this, we envisage the process for agreeing a written constitution for the UK as follows:



2.3 The Elements of the New Constitutional Settlement

- 2.3.1 The rest of this paper outlines the elements we see as fundamental for any new constitutional settlement for the UK, and therefore for any written constitution.
- 2.3.2 We believe that at the core of the new constitutional settlement should be a fundamentally different and clearly defined relationship between the citizen and the state. A Liberal Democrat government would set in train changes to ensure the political process is fairer and gives individuals greater influence. In addition, we believe that any future written constitution should enshrine measures to ensure the protection of individuals' human rights. It should also include measures to facilitate more effective and accountable government and governance, strengthening the accountability of the executive and of the many government agencies in the UK to Parliament and the people, as well as guaranteeing judicial independence.
- 2.3.3 In conjunction with policy paper 79 *The Power to be Different*, the new Liberal Democrat policy paper on local government in England, this paper makes the case for radical decentralisation of power in the UK, including the redistribution of powers from Westminster and quangos to accountable, decentralised government across the UK.
- 2.3.4 Lastly, integral to any new constitutional settlement should be the engagement of citizens in what the settlement involves. Therefore, it is crucial that citizens are adequately educated in the content of, and the process for agreeing, the new constitution.

3. A New Relationship Between the Citizen and the State

3.1 Political Representation and Fair Elections

- 3.1.1 British citizens are cheated by the present first-past-the-post (FPTP) electoral system. Quite simply it is no longer fit for purpose in the multi-party environment of the 21st Century. It fails to generate government by consent, most of the electorate are effectively disenfranchised at a national level since their votes have no effect whatsoever on the outcome. Widespread recognition that only about a fifth of the country has any chance to effect change causes turnout to plummet. Given how impotent electors are, it is scarcely surprising that so many, especially in younger age groups, view voting as a waste of time.
- 3.1.2 Renewing genuine choice with a fairer voting system is not a panacea for renewed engagement in political institutions, but without it other reforms can only be of limited value. Increasingly, the issue (for people of all parties and none) is not whether to change the system, but how and when.
- 3.1.3 The late Lord Jenkins of Hillhead was commissioned to produce a reformed system which would maintain four key elements: (i) broad proportionality; (ii) the need for stable government; (iii) an extension of voter choice; and (iv) the maintenance of a link between MPs and geographical constituencies. While we recognise the practical and political advantages of the Jenkins Commission's AV Top-up system² compared to first-past-the-post, Liberal Democrats nonetheless maintain that the STV system can provide a constituency link between MPs and electors – just as is presently the case in multi-member wards on local authorities across the country – but has the added advantage that it offers voters choice not just among the parties, but within them. STV also provides voters with a choice of representatives to approach when they have concerns or need help, and will only produce one 'class' of MP.
- 3.1.4 We believe that the need for reform of the voting system for elections to the House of Commons is urgent and an essential precondition for the recovery and reinvigoration of British democracy. For that reason, in the first year of a Liberal Democrat government, we would propose legislation for the introduction of STV.
- 3.1.5 Elections to the reformed second chamber – now a revived possibility as a result of Commons votes in March 2007 – do not share the need for the same close connection with a relatively small area. Indeed, Liberal Democrats believe that it will be vital to create a distinctly different mandate for its members in order to avoid unnecessary conflict with MPs. Nor would it be necessary to create a second chamber in which the Government must gain and retain confidence. We therefore recommend that one third of the members of the second chamber are elected by STV in large multi-member

² The Report of the Independent Commission on the Voting System was published in 1998 and recommended the first-past-the-post system be replaced by a two-vote mixed system referred to as AV (Alternative Vote) Top-up. Under the new system most MPs - 80% to 85% - would continue to be elected on a constituency basis, by the AV (Alternative Vote) system, while the rest would be elected on a corrective top-up basis designed to reflect voters' party preference more accurately. Electors would get two votes: one for their choice of constituency MP and the other for their party of choice to determine the allocation of top-up MPs.

constituencies³ every four years (meaning that over the course of a 12-year cycle every seat would be up for election), on dates to coincide with Scottish, Welsh and other devolved assembly elections, for a single non-renewable term of twelve years.

- 3.1.6 A deliberate contrast between the sizes of House of Commons constituencies, on the one hand, and second chamber constituencies on the other, will be an additional measure to avoid competition between the two Houses, and encourage both to co-operate in a joint endeavour to hold the executive to account.
- 3.1.7 An abiding injustice and anachronism in our political system is that the timing of elections, and, to a lesser extent, the length of the campaign which precedes them is in the gift of the Prime Minister of the day. Essentially, a key competitor in the race holds the starting pistol.
- 3.1.8 Liberal Democrats have long argued that parliaments should last for a fixed term of four years. In a reformed political system coalition government might be the norm and stability can only be encouraged by a system which does not allow for snap elections when political relationships suffer temporary disruption.
- 3.1.9 We believe that MPs stand for election to the Commons specifically because they wish to support – and possibly to form – a government; we consider, therefore, that there will very rarely be a situation in which no political party is prepared to take a lead. Exceptionally the Commons should be able to dissolve itself with a two-thirds majority.

3.2 Political Parties and Organisations

- 3.2.1 The traditional association of political parties with economic and social groups has collapsed in the last fifty years. The electorate is far more volatile and less committed. In many ways, voters are more discriminating. Single issue and campaigning groups have flourished, while the Iraq invasion and '*Make Poverty History*' have provoked huge public reactions. These are healthy features of the body politic in the 21st Century. The effect on the parties themselves has been less beneficial. They have become increasingly vulnerable to, and dependent upon, manipulation by wealthy individuals or sectional interests.
- 3.2.2 In the wake of the 'cash for peerages' scandal, and political parties' propensity to target huge sums in marginal constituencies, transparent and enforceable limits on political donations are urgent. Liberal Democrats also believe that regulations should be put in place to cap the very significant sums which are presently spent outside election periods, and which are therefore not subject to any spending limits. We do not believe that such a measure need limit local political *activity* but it will militate against disproportionate intervention in local campaigns from the centre. Donation limits must be tight enough to ensure that donors cannot exert disproportionate influence over party policy, and spending limits must be tight enough to ensure that parties cannot buy elections, either nationally or at constituency level. We accept that some increase in state funding is justified if adequate donation and expenditure limits are brought in.
- 3.2.3 However, it is also essential to reduce the financial domination of the central party organisations – not least between elections – and to encourage more local campaigning. Simply replacing the purchase of private influence at the centre with

³ These could be based on the present European constituencies but we would expect that, particularly in the larger regions, it may be possible to divide into smaller units.

increased state contributions at a national level would be an enormous missed opportunity. Any new funding from the taxpayer will be more acceptable if it is concentrated at the local level so that it encourages engagement through real community campaigning. The voter should be able to choose at the ballot box to which party his or her public donation should be made. People could elect to *vote for* one party but *donate to* – and thereby bolster the campaigning efforts of – another, and could, of course, decline to have the money donated to any party at all. Similarly, the contributions of trades' union members should be subject to a clear and transparent process which links the intention of the member to the destination of the donation.

3.3 Making it Easier to Vote

- 3.3.1 In *Reforming Governance in the UK* (2000) the party committed itself to encouraging new methods of voting, including more postal votes and Internet voting. All-postal ballots in local and European elections have helped increase turnout. However, there are dangers of electoral fraud associated with postal voting that still need to be overcome. Similar problems of personation, multiple voting and intimidation could occur with other new types of voting, such as texting and email. In addition, there is much to be said for the aspect of civic participation associated with actually attending the polling station to cast one's ballot. Therefore, while we endorse the changes which have ensured people who are unable to vote in person, e.g. because they are ill or away from home, are able to vote by post, we wish to make it easier for people to vote in person. To this end, we recommend moving elections to the weekend, with the possibility of extending elections to two days, as occurs in some other Western democracies.
- 3.3.2 Liberal Democrats call for votes for sixteen-year-olds to overlap with better citizenship education in schools and have repeatedly supported calls for individual voter registration to improve security, while the Power Inquiry's report in 2006 concluded that automatic, individual voter registration at sixteen should be introduced and that this could be done in tandem with the allocation of National Insurance numbers. We support this recommendation and would seek to introduce this reform as soon as practicable.

3.4 Reviving Local Democracy

- 3.4.1 Liberal Democrats are committed to local politics both because it is so often the most appropriate place to get things done and because it is the most effective way of engaging people in the political process. However, British politics has become increasingly centralised in recent years, with local government increasingly required merely to implement central government policies rather than act independently in the interests of local citizens. Moreover, the number of democratically elected representatives has fallen for a century, while the number of quangos in the UK has increased hugely in recent years. This centralisation and the rise of unelected bodies both contribute to political alienation as citizens feel they can do little to affect the political process.
- 3.4.2 Liberal Democrats believe that it is important to reverse the trend towards centralisation. We believe that local authorities should be allowed to get on with their work, freed from the diktats of central government. This will ensure that voters know precisely whom to hold accountable if things go wrong locally and will give local

politicians and other elected officials a clear incentive to act responsibly, since they will no longer be able to blame central government targets and the like. Local elections will thus become more relevant and hence be more likely to engage people.

- 3.4.3 In addition, we want to reverse the trend towards non-elected bodies and reassert democratic control over the quangocracy in Britain. Where possible we would redistribute powers from quangos working at the national level to accountable, decentralised government across the UK. However, some quangos, such as those serving purely advisory functions, are very useful and we do not wish to abolish those. In all cases these should be made more transparent and accountable. The membership and operation of these should be subject to scrutiny either by MPs at Westminster or by elected representatives in the devolved institutions.
- 3.4.4 The future shape and scope of unelected quangos should be for elected local authorities to determine. They should have power to scrap quangos, change quangos' remits, and reduce or transfer their powers and functions

3.5 Participative and Representative Democracy

- 3.5.1 A revitalised relationship between citizen and state should involve people having more of a say in government and the decisions it makes. Other Western democracies already have various forms of participative democracy, and we believe that incorporating the best they have into our system would help restore public confidence in British democracy. We accept that there is a tension between representative democracy on the one hand, where elected representatives make decisions and are accountable to the electorate through the ballot box, and direct democracy, where the electorate have direct power to make decisions on substantive issues on the other. However, we do not see representative and participative democracy as necessarily mutually exclusive. If the respective roles of representatives and electors are carefully distinguished, they can be complementary, and we believe that there is a clear role for participative democracy in improving the quality of British democracy.
- 3.5.2 Our proposals for establishing a new written constitution have at their heart the sovereignty of the people in setting the rules by which the political process will function. That is why we propose that it is for the people in a referendum, rather than just for Parliament, to give final approval to the constitution drawn up by the constitutional convention, and why any future amendment of the constitution should require endorsement by a majority of those voting in a referendum in addition to an enhanced majority in each House of Parliament.
- 3.5.3 Petitions as a mechanism for the public to raise issues have been fully incorporated into the way the Scottish Parliament deals with its business. Unfortunately this example of good practice has been undermined in England by the Government's cynical use of petitions through the Number 10 website. These petitions have also been abused by media-driven mass campaigns such as that against road pricing which have obscured and distorted the issues. Nevertheless we believe there is a significant role for an enhanced petitions process.
- 3.5.4 We would therefore introduce Citizens' Initiatives at both a national and local level. At a national level this would effectively reform the right to petition the House of Commons and the process by which Parliament deals with petitions. A petition would have to be considered by the Commons if supported by 2% of the registered electorate. A petition

which gained this level of support would be considered by a Petitions Committee, as in the Scottish Parliament. This Committee would consider the petition and decide whether it merited further consideration. If so the petition would be referred to the relevant select committee or could be referred for debate on the floor of the House. This could then result in legislation or policy changes. Alternatively no further action would be taken and the petition closed.

3.5.5 We would introduce similar facilities for people to introduce Citizens' Initiatives at a local level, with the petitions process and the electorate thresholds for a petition in a local authority mirroring those in the Commons.

3.6 Improving Consultation

3.6.1 The present Labour Government has purported to undertake more consultation than ever before. It has made some use of electronic methods of consultation and has supported the use of website petitions discussed above. However the consultation exercises conducted by this Government and its predecessors have suffered from the following weaknesses:

- The terms of the consultations are often too restricted, e.g. the major decisions have been taken before the consultation process, leaving only issues of detail and implementation for public consultation.
- The time for consultation is often far too short.
- The method of consultation is limited to an invitation to interested bodies to respond to specific detailed questions in writing, confining likely responses to these with a specific expertise or direct interest in the outcome.

3.6.2 We believe that more widely based consultation is an essential part of a functioning liberal democracy and would require much more inclusive and more extensive consultations, at national and local level. The department or authority concerned should advertise the consultation widely; invite responses via an informative and easily navigable website, as well as in writing; allow plenty of time for consultation on a well-presented discussion paper; and arrange meetings with the public, interested bodies and those with experience and knowledge of the issue (where these are on national issues, in the regions, as well as in London).

3.6.3 One alternative to traditional methods of consultation, endorsed by *Reforming Governance in the UK* (2000), is the use of Citizens' Juries. These are bodies of randomly selected individuals, who hear evidence from expert witnesses with diverse perspectives and go on to produce findings and recommendations. They have become increasingly popular in local government, the health sector and elsewhere. We would see the use of Citizens' Juries as an adjunct to the methods described above. To succeed, they must be treated seriously and not simply as focus groups to assist in marketing outcomes already decided upon by government.

4. The Citizen and the State

4.1 Liberty and Security

- 4.1.1 At the core of Liberal Democrat philosophy is a fundamental belief in the freedom of the individual. Liberal Democrats therefore see the state as being a servant of its citizens, rather than the other way around. However, under Blair's premiership Labour used the spectre of crime and terrorism to reduce our human rights and restrict individual liberty. We are to be compelled to have identity cards, the right to trial is being progressively eroded and the public's entitlement to demonstrate near Westminster has been restricted.
- 4.1.2 The rationale behind these moves is increased efficiency and security. However, security can only be genuinely realised if liberty, justice and human rights are upheld as the cornerstone of our democratic system, to be enjoyed by all on an equal basis. Liberal Democrats believe that ceding liberty to attain security jeopardises both.
- 4.1.3 Nevertheless, we recognise that some measures that restrict our freedom may be justified by the requirements of security. For example, increased surveillance of suspected terrorists may be required for the protection of the public. However, Liberal Democrats insist that any measure sought by the Government which encroaches on civil liberties must accord with the following basic principles:
- The threat of harm must be sufficiently severe to justify the measure, having regard both to the nature of the harm threatened and to the likelihood of its occurrence.
 - The measure must restrict liberty no more than is absolutely necessary to achieve its aim.
 - It must be demonstrably likely to be effective in achieving that aim.
 - It must be proportionate.
 - It must be introduced to last no longer than is necessary.
 - Its implementation must be subject to appropriate independent scrutiny.
 - It must be subject to such safeguards as are necessary to ensure that the effect on civil liberties is kept to a minimum.

4.2 The Protection of Human Rights

- 4.2.1 Restoring the balance between citizen and state and reasserting the rights and freedoms of the individual involves redefining the relationship between individuals and the state. In this context, lawful residents of the UK who are not UK nationals are fully entitled to all those rights of citizens which are not specific to nationals, such as the right to vote in parliamentary elections.
- 4.2.2 The first step in this process is defining and protecting individuals' human rights. Liberal Democrats believe that fundamental human rights are not the gift of government, but rather they are part of people's birthright as human beings, and the state has a fundamental obligation to protect that birthright. Britain was a founder signatory of the European Convention on Human Rights and indeed there was a significant British involvement in its genesis. Yet it was only in 2000, when the Human Rights Act came into force, that Convention rights were incorporated into domestic law.

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- 4.2.3 A weakness of the Human Rights Act is that, while it does impose a duty on courts to interpret other legislation in a way compatible with the Act where they can, it does not permit the courts to declare statutes that do violate it to be invalid. The courts may merely make a 'declaration of incompatibility', leaving the Government to decide whether or not to change the law in consequence. While, to date, the Government has respected such declarations, there is no guarantee that future governments would do so.
- 4.2.4 The written constitution we advocate would incorporate a new Bill of Rights, which would entrench the rights presently enshrined in the European Convention in the British Constitutional Framework. Thus the citizen would be entitled to challenge legislation as well as executive action on the ground that it infringed his/her human rights and the courts would be entitled to rule that legislation was unlawful if it was incompatible with the Bill of Rights. Furthermore the rights protected by the Bill would not be capable of being removed or limited by simple parliamentary majority, but would require a constitutional amendment to remove or restrict them.
- 4.2.5 Some rights, such as the right not to be tortured, are absolute, in the sense that they cannot be balanced against the interests of others but constitute an absolute limit on the lawful actions of the state. Other rights are qualified or limited by the interests of others and of the community or the state in a wider context, for example, the right to enjoy property is limited by the obligation to pay taxes, and the right to freedom of expression is limited by the rights of others not to have racial hatred stirred up against them and not to have their reputations unjustifiably besmirched. These limits and qualifications are well expressed in the Convention and we must be astute to ensure that the balance is not shifted in favour of the State.
- 4.2.6 Threats are posed to individual freedoms not only by an over-powerful state but also by private concentrations of power. The Human Rights Act only protects citizens' human rights against infringement by the actions of public authorities. Yet many private bodies exercise considerable powers over citizens, particularly those with special statutory powers. An example could be utility companies with an effective monopoly in a particular area. We consider that citizens should be able to have recourse to the Bill of Rights where their human rights have been infringed by such large private organisations' exercise of power. However, this principle should not be too widely drawn; generally relations between private bodies and individuals should be left to private law.
- 4.2.7 Human rights are particularly liable to be infringed if individual citizens are not aware of the rights to which they are entitled (there are specific concerns around the rights of those under the age of majority and those who do not have full mental capacity). Our proposals for citizenship education would aim to ensure that individual citizens are informed and educated about their rights, as well as the limitations which apply to these rights, so that they have a greater understanding of their role as citizens within the community and of the relationship between citizen and state.
- 4.2.8 The rights of individual citizens are also dependent in practice upon the way in which organs of the state perform their responsibilities to the people living in it. The state, in its widest sense, of course has many agencies and different tiers. The way the NHS, HM Revenue and Customs and local social services operate, can all impact on individual freedoms. There is a need for much more concentration within the public

services as a whole on respecting the rights of individual citizens in the way in which they perform their functions.

- 4.2.9 The Equality and Human Rights Commission, established under the Equality Act 2006, must be empowered and adequately resourced to champion the individual rights of all who live in Britain and, where suitable, to initiate and pursue cases through the courts. It is also crucial that legal aid be available to individuals for cases brought to enforce human rights. It is no use having human rights theoretically protected by law if the public are not in practice able to bring cases before the courts. Successive governments have undermined the legal aid system and it is an important aspect of better governance that access to justice be affordable, so that citizens can obtain proper legal redress for infringement of their rights.

4.3 Complaints

- 4.3.1 While it is vital that significant infringements of human rights are justiciable in the courts, there are a whole host of issues that arise in the everyday conduct of the relationship between individual citizens and the state that give rise to justifiable complaint, but do not justify and should not give rise to recourse to the courts. Nevertheless, if these complaints are unaddressed, individuals are left feeling powerless and resentful, and with a feeling that the authorities simply do not care. There is still a general and often justified feeling that public bodies do not treat individual citizens' complaints seriously.
- 4.3.2 Individuals currently have a number of routes for making complaints, such as through the Parliamentary and Local Government Ombudsmen. Ombudsmen do represent a partial answer, but their powers are generally restricted to investigation and recommendation and they have limited power to reproach and correct the cause of the complaint.
- 4.3.3 Furthermore, a complaint to an ombudsman is a heavy-handed mechanism for dealing with a minor complaint and an expensive and time consuming exercise for all concerned, for the ombudsman and for the individual making the complaint. We also believe that recourse to litigation should be a last resort and is generally appropriate only for cases where there is a real dispute and a significant compensation claim. We therefore believe that low level complaints would be better handled in the first instance by the public bodies concerned. We would introduce a statutory code for complaints handling for all public bodies to ensure that low level complaints receive proper attention and remedy without the need for litigation or recourse to the ombudsman in most cases.

4.4 Freedom of Information

- 4.4.1 The balance of power between citizen and state can only be properly maintained if the citizen is able to access information regarding the decisions and actions of the state. Individuals now have the right under the Freedom of Information (FOI) Act 2000 to request, and generally to receive, information from the differing tiers of government and various agencies. The FOI Act is a considerable advance for freedom and openness, but a culture of secrecy still exists. There can still be considerable delays in responding to requests. Whitehall guidance says the 'working assumption' should be to withhold advice, recommendations and options but to release background factual

information. However, all too often everything, including the background material, is withheld.

- 4.4.2 The Government has published proposals to make it easier for public authorities to refuse to release information on cost grounds. At the moment, an FOI request can be refused if the cost of dealing with it exceeds £600 for a government department, or £450 for any other public authority. The new proposals would make it even easier for public authorities to refuse information on cost grounds by allowing them to take into account the costs of consulting about the request and considering whether to release the information as well. Public authorities would also be able to aggregate requests made by the same individual or organisation (e.g. the BBC) and refuse them all if the total cost exceeded the £450 or £600 thresholds.
- 4.4.3 We believe that free access to officially-held information is a pre-requisite to making government and Parliament genuinely accountable, therefore the FOI Act needs to be implemented in such a way as to ensure that the public is able to secure answers to requests for information quickly and easily. The Information Commissioner should be bound to ensure that government at all levels operates on the basis that all requests for information not specifically excepted from the operation of the Act are to be honoured fully and expeditiously. Unnecessary exceptions to the Act should be removed and further exceptions resisted, such as the scandalous attempt to exempt MPs from the operation of the Act. There should be no rationing of information according to how many requests come from particular organisations – investigative journalism by serious newspapers should be encouraged in a free society, not limited. Any cost limits should be set at levels whereby only the most onerous requests could be refused and only then if it is clear that the cost of answering the request substantially outweighs the public interest in the requested information. The resources available to the Information Commissioner should be increased to a level at which consideration of any refusals to provide information can be dealt with quickly, efficiently and less bureaucratically than at present.

4.5 Privacy

- 4.5.1 Liberal Democrats believe that the individual's right to privacy has been severely compromised by the current Labour Government, to the point that existing protections of personal information – which form the basis of key social contracts such as medical confidentiality – are under serious threat. At the same time technological developments mean that the scope for abuse by governments, companies and individuals is greater than ever.
- 4.5.2 Liberal Democrats would scrap the Identity Cards Act 2006 and with it both the identity card scheme and National Identity Register. We would restrict the ability of government departments to propagate personal data inside departments, cross-departmentally and with third parties. Where information is shared, we would require the departments involved to provide reasonable grounds for doing so in each instance and subject this to parliamentary scrutiny.
- 4.5.3 Liberal Democrats would augment data protection legislation by requiring consent to be contractually defined and limiting the length of time such data can be used without renewing consent. This would ensure that ultimate ownership of personal information

would remain with the individual and use of copies of this information would be more tightly controlled.

- 4.5.4 We would more tightly regulate the storage and use of all biologically derived personal data (biometrics) and only those guilty of a criminal offence would have their DNA permanently recorded on the National DNA database.
- 4.5.5 To ensure that privacy, data protection and freedom of information legislation is properly enforced, we would ensure that the Information Commissioner is adequately resourced and sufficiently independent of government.
- 4.5.6 No privacy or data protection law can be perfect in a globalised world where companies and individuals can hide behind lax regulatory regimes to avoid prosecution. Liberal Democrats would therefore insist that government and the Information Commissioner promote awareness of the issues surrounding privacy and data protection in order that people might be encouraged to value personal privacy more highly.

5. Better Scrutiny and Accountability of the Executive

5.1 The Role of the Commons

- 5.1.1 Britain's executive dominates its legislature. Almost a third of Labour MPs hold positions in government, from Cabinet Minister to Parliamentary Private Secretary. Others see themselves more as potential ministers than as scrutineers of executive power. Neither devolution to Scotland and Wales, nor the rising number of political advisers in Whitehall, has yet led to a reduction in ministerial numbers. Prime Ministerial patronage enables governments to rush ill-considered legislation through the Commons unamended. The decline of party constraints on political leadership has further concentrated executive power in the Prime Minister.
- 5.1.2 The strongest control that legislatures can exercise over government is their control over expenditure – over executive priorities and so over policy. The current pattern of Commons business, however, precludes the House from playing an effective role in this. The Finance Bill deals only with those parts of the Budget which require specific law changes. 'Supply days', originally an opportunity for the House to decide expenditure, have become 'Opposition Days', which are merely opportunities for debates. 'Estimates Days', supposedly set aside for controlling expenditure, really just produce a broadly based debate. Select Committees and the Public Accounts Committee (in conjunction with the National Audit Office) have a largely retrospective role. As a result, there is no real debate - still less any substantive votes – which set public spending priorities ahead of executive action. Parliament exercises little muscle in constraining spending – and so shaping policy, even if it has considerable scope to protest when mistakes have already been made. Therefore, the Liberal Democrats call for Parliament to introduce procedures that allow the Commons to exercise effective control over all aspects of the budget and expenditure.⁴
- 5.1.3 The British House of Commons is larger than the main parliamentary chamber in any comparable democratic state. Meanwhile, Britain's emasculated local democracy, and the absence (in England) of any intermediate accountable and representative level, has left MPs responding to local problems as well as dealing with matters which are rightly the province of Westminster and Whitehall. A smaller government, with further devolution of the powers that have been centralised over the course of the past century, would allow us to reduce the number of MPs. The eventual number would depend on progress with reform of the electoral system, not least the size of constituencies under the STV system we favour and how many members would be elected in each. In any event, we envisage that the 'payroll vote' could be dramatically reduced.
- 5.1.4 Excessive executive domination lends itself to knee-jerk, tabloid-led government, and bad legislation – over 50 Home Office Acts since 1997, for example, creating some 3,000 new offences, some unenforceable. Liberal Democrats are committed to

⁴ Ed Davey outlines detailed proposals for the reform of the role of MPs in overseeing the Government's budget in his paper *Making MPs work for our money: Reforming Parliament's role in budget scrutiny*, published in 2000 by Centre for Reform.

reducing the volume of legislation, and building in automatic reviews of necessity and efficacy. The present Government has indulged in the mistaken belief that problems can be solved simply by rearranging the Whitehall jigsaw. For example, responsibility for transport has since 1997 been vested, successively, in a Department of Environment, Transport and the Regions, then in a Department of Transport, Local Government and the Regions, and finally in a Department for Transport. There is no evidence that such a churn of departmental responsibilities improves government, but it is certainly costly and disruptive. Parliament must reassert its scrutiny role over such changes.

- 5.1.5 House of Commons Select Committees have a crucial role to play. They should be the cutting edge of Parliament's traditional responsibility for examining government expenditure, and the policy priorities which are the corollary of spending decisions, while also taking the lead in pre- and post-legislative scrutiny. To this end, they must be given greater independence, as recommended by the Modernisation Select Committee in February 2002. Their proposals would place Select Committee membership in the hands of a Committee of Nomination, which would have the specific responsibility of ensuring appropriate backbench representation and could entertain appeals from aggrieved Members.

5.2 Reformed Second Chamber

- 5.2.1 The principle of a reformed House of Lords "on a popular instead of a hereditary basis" was first agreed by both Houses of Parliament in the 1911 Parliament Act. Recent events have given the impetus towards an elected second chamber new life, although the timescale envisaged by the Government is a lengthy one.
- 5.2.2 Liberal Democrats in both Houses have played a crucial role in reinvigorating the process. Their votes in the Commons contributed significantly to the majorities for reform, while their votes in the Lords were the only ones to provide majority support for a wholly or predominantly elected element. By contrast, both Labour and Conservatives voted against their leaders' and parties' policy in both Houses.
- 5.2.3 As the Government reviews the situation, we reiterate our preference for a wholly elected chamber. Experience and expertise can be sought from witnesses to parliamentary committees, rather than relying on ex-experts appointed to the legislature on a long-term basis. We will continue to press for provisions to be incorporated in any legislation to reform the House of Lords which will see second chamber elections by thirds, using STV, for a single non-renewable term (see section 3.1.5 for proposals on elections to a reformed second chamber).
- 5.2.4 The role of the reformed second chamber – renamed 'The Senate' – must be complementary to that of the Commons. In our submission to the 2006 Joint Committee on Conventions we emphasised that the primacy of the Commons could be ensured, without denying the right and responsibility of the Senate to say "no" occasionally when the specific issue demanded it. This Committee was instituted by the Government in the hope that that key so-called 'conventions' could be enshrined in a cross-party report, which would subsequently restrain (and indeed constrain) a reformed House. However, the Committee endorsed the Liberal Democrat approach, and that of other witnesses, unanimously recognising that the conventions must be "flexible and unenforceable". Eventually, ministers accepted that there should be no

reduction in the role and powers of a reformed second chamber. Indeed, there is now widespread agreement that effective scrutiny of legislation (and international treaties) requires strengthened, rather than diluted, responsibilities.

5.3 Management of Parliamentary Business

- 5.3.1 Currently, the executive controls almost all business in the Commons (save for that allocated to Opposition Parties' debates and Private Members' Bills). Of course, were a balanced or hung Parliament to result from the votes at a general election, business management would be the subject of negotiation among the parties. Since there is no government majority in the current House of Lords – and never likely to be again – this is the norm for the second chamber, and it works well.
- 5.3.2 For the sake of the stable conduct of business in a reformed Parliament, both Houses should look to the system in the Scottish Parliament, in which a business committee representative of the chamber as a whole decides on business. Most other legislatures in the world (whether they include members of the executive or not) would regard it as bizarre that the government should determine the working priorities and timetable of the institution charged with monitoring that government's actions.
- 5.3.3 We propose that Opposition Parties should be afforded the ability to carry their business over one Opposition Day to another, and to force votes on contentious issues.
- 5.3.4 Additionally, Liberal Democrats recently argued in our submission to the Joint Committee on Conventions that there should be a Joint Business Committee of *both* Houses to determine how the legislative programme as a whole is handled. This would not stop either House determining for itself how to handle particular Bills but would make for a more efficient and effective relationship governing the interplay between one House's scrutiny of a Bill and the other's.

5.4 Relationship Between the Houses

- 5.4.1 Progress with the reform of the second chamber, tentative changes to Commons procedure initiated by the Modernisation Select Committee and the unanimous decisions of the Joint Committee on Conventions may now offer a valuable opportunity to create a more constructive partnership between the two Houses of Parliament. Liberal Democrats are determined that this chance to review and improve the effectiveness of Parliament as a whole should be grasped as comprehensive package.
- 5.4.2 Our proposals maintain the primacy of the Commons. It is there that the Government has to gain and retain the confidence of a majority, and it is there that a general election generates a mandate for its programme, while the Prime Minister and senior ministers are drawn from its ranks. MPs will continue to have a close representative role for their constituents.
- 5.4.3 In the present House of Lords a convention in favour of ensuring that no party has a majority has emerged. While we recognise that in an elected House this decision would rightly lie with the electorate, we believe that the absence of a majority for any single party makes for a more effective and deliberative second chamber. We contend that it is most unlikely that the reformed chamber would ever see a majority of seats gained by any one party, as to do so would, even in a wholly elected chamber, require

the party concerned to gain more than 50% of the vote over the course of three successive Senate elections.

5.5 An End to ‘Sofa’ Government

- 5.5.1 The quality of decision making (and record keeping) within government now falls well below the standards set for corporate boards in the private sector. The Butler Review (of *Intelligence on Weapons of Mass Destruction*) condemned the “informality and circumscribed character of the Government’s procedures”, which reduced “the scope for informed collective political judgement” on the nature of the threat posed by Iraq and the appropriate UK response. Key decisions were taken through conversations on sofas in No.10; documents were drafted by informal groups, working to the Prime Minister alone. The Cabinet as a whole was neither informed nor effectively consulted; background papers were not circulated in advance. Records of decisions taken in such informal groups were insufficient to provide the ‘audit trail’ needed for accountability and scrutiny. The UK was thus committed to war without the informed consent of the Cabinet or the opportunity for Parliament to hold the government to account.
- 5.5.2 Good governance, in the public as well as in the private sector, requires regular procedures and formal decisions. Anthony Eden’s bypassing of informed Cabinet approval in committing British troops to the Suez intervention forced his resignation. Margaret Thatcher grew increasingly impatient with her Cabinet, but continued to take major policy decisions through it and it was the withdrawal of support from her Cabinet that forced her to step down. Tony Blair has governed through bilateral discussions with ministers more than through his collective Cabinet; strategic coordination has come, where it has existed, from policy units in Downing Street rather than from agreement among ‘responsible’ ministers. Decisions appear sometimes to have been driven by media opportunities. Reorganisations of public services and proposals for new legislation have too often been announced to catch a headline without prior consultation on feasibility or necessity.
- 5.5.3 The UK has a parliamentary, not a presidential, system of government. Strong prime ministers have nevertheless used the prerogative powers of the executive to bypass the Cabinet and resist parliamentary scrutiny. Under the Blair Government, the personal style which Margaret Thatcher developed has become entrenched, reinforced by Downing Street’s intensive interaction with the media: fast government, responding to daily news demands. Less frequent tinkering with the structure of public services, and less frequent changes in domestic law, would have given us better governance. Liberal Democrats want to see clearer codes of ministerial and civil service responsibilities, to re-establish collective Cabinet decision-making under regular parliamentary scrutiny. The terms of reference for future enquiries into major government decisions, and the membership of the enquiry team, should be subject to the approval of the Public Administration Select Committee, not determined by the government after secret negotiations with opposition front benches.

5.6 Changes of Government

- 5.6.1 It is unacceptable in a parliamentary democracy that a new government assumes full authority once a Prime Minister-designate has kissed hands with the Queen, without waiting to present a programme for government to Parliament. The late-night scuffle of defeated Prime Ministers from Downing Street, with their successors plunging into

action and restructuring government departments before the newly-elected Parliament has had time to convene, symbolises the constant rush to action that disfigures British governance. The Prime Minister's endowment with prerogative powers demonstrates the dominance of executive power over democratic deliberation. As in other democracies, outgoing governments should continue as caretakers in office until Parliament has approved the composition and programme of the new administration. New governments should formally assume office when Parliament has voted to approve their programmes. The Queen's formal opening of Parliament would then include her nomination of Prime Minister, but the Prime Minister-designate would present his or her own legislative programme to Parliament.

5.7 The Structure and Staffing of Government

- 5.7.1 Devolution to Scotland and Wales since 1997 has, to a limited extent, checked the concentration of authority and responsibility in Westminster that the Thatcher and Major Governments had pursued. In England, however, the Blair administration has continued to accumulate detailed control at the centre, while transferring executive tasks to agencies accountable only to ministers. Many tasks of government that in almost all other constitutional democracies are allocated to elected regional or local bodies are managed in England by executive agencies (or Quangos), often with substantial budgets, which are only indirectly accountable to Parliament through already-overloaded ministers. Their governing bodies, appointed by ministers, extend government patronage across services such as health, law and order and education where local delivery is key. Examples include NHS bodies, Learning and Skills Councils, and Regional Development Agencies. The proliferation of such bodies has contributed to alienation of citizens from the political process. Wherever possible such executive tasks should be undertaken at a local level, and subject to local democratic accountability, rather than by Whitehall and its offshoots.
- 5.7.2 Effective governance has not been helped by constant reorganisation. Whitehall departments have been reshaped several times since 1997 by Prime Ministerial *fiat*, usually without outside consultation or parliamentary approval. The first attempt at the abolition of the Lord Chancellorship, as an incidental consequence of a government reshuffle, was a particularly bad example of ill-considered change. Executive agencies have been repeatedly restructured, before existing patterns of work and responsibility have had time to demonstrate their effectiveness; successive reorganisations of the NHS for example, have added substantial extra costs, damaged staff morale and interrupted the flow of work. Ministers appear to regard announcements of reorganisation – of the police, of the prison or probation services, of government inspectorates, for example – as demonstrating 'action', when the effect has often been to lower motivation and disrupt the delivery of services.
- 5.7.3 Greater parliamentary oversight of the structure of government would force ministers – including the Prime Minister – to spell out the rationale for proposed changes, and to address the unavoidable trade-offs between immediate disruption and longer-term benefits. We propose that all significant reorganisations of ministerial departments should be subject to parliamentary approval before implementation. We recommend that a newly nominated Secretary of State should be interviewed by the appropriate Departmental Select Committee, to establish his or her policy priorities and suitability for that office, and should only be able to answer Parliamentary Questions in the

Commons once their appointment has been endorsed. All these changes would reinforce the accountability of ministers to Parliament in a tangible form. We also propose that the relevant parliamentary committees should approve significant reorganisation of executive agencies in those cases where it has not proved possible to return or allocate the functions to elected local authorities.

- 5.7.4 Further, the autonomy of the central civil service has been greatly weakened by the proliferation of political advisers and the massive expansion in the employment of private consultants across government. Greater emphasis on delivery and management are welcome in principle but have not succeeded in practice, as such spectacular failures as the Child Support Agency, the management of the BSE epidemic, the Immigration and Nationality Department of the Home Office and successive IT projects have illustrated. Rapid changes in ministerial tenure and instructions, confusion between autonomous management and political direction, micro-management from Downing Street and the Treasury cutting across departmental strategies, have all made it difficult to apply consistent principles of management.⁵
- 5.7.5 In particular, the proliferation of political advisers has blurred lines of responsibility in Whitehall with consequent confusion between junior ministers, political advisers and civil servants as to who takes or gives advice and who gives instructions. In order to avoid the increasing politicisation of the civil service, there needs to be a clear restatement of the principle that civil servants and political advisers give advice and only ministers, with their accountability to Parliament, give instructions.
- 5.7.6 Many well proven mechanisms and practices for developing and agreeing major policies have fallen into disuse. Better decision-making should be enhanced by codifying how major decisions will be prepared and agreed by government (this code to be prepared by government and noted by a parliamentary resolution).
- 5.7.7 Trust between the senior civil service, government, opposition parties and Parliament – weakened by hyperactive ministers, and by the priority given to news management over service management – needs to be re-established.
- 5.7.8 Liberal Democrats are committed to the principle of individual ministerial accountability to Parliament. The civil service should be based on the fundamental principles of permanence and impartiality. These principles cannot be realised, let alone upheld, if credit for success is persistently assumed by ministers, while responsibility for failure is routinely sub-contracted to officials.
- 5.7.9 The Blair Government published a draft Civil Service Bill to clarify the relationship between the ministers, their special advisers and the civil service. It is now imperative that this legislation is taken through Parliament by the Government.

5.8 Separation of Powers

- 5.8.1 A central tenet of the written constitution which Liberal Democrats and our predecessor parties have long argued for should be an elucidation of the principles and practices of separated powers among the judiciary, the executive and the legislature.

⁵ In the Blair Government there were four Home Secretaries, six Secretaries of State for Trade and Industry, four for Health and five for Education. There were also seven Chief Secretaries to the Treasury and seven Leaders of the House of Commons, and John Reid alone had nine jobs in ten years.

For the People, By the People

- 5.8.2 The accountability of the government to Parliament is at the heart of our democracy. It is therefore essential that the powers of the executive are defined and limited as part of the new constitutional settlement.
- 5.8.3 We acknowledge the need for some day-to-day executive action, independent of Parliament. However, we believe strongly that the range of prerogative powers held by the Prime Minister in the name of the Monarch is too wide and should be circumscribed. It remains a mark of their scope that the Government says it cannot enumerate exactly what the powers are.
- 5.8.4 The principle of judicial independence is presently set out in a Concordat dating from 2004 between the Lord Chief Justice and the then Secretary of State for Constitutional Affairs, who has a statutory duty “to defend and uphold the continuing independence of the judiciary”. Liberal Democrats believe that these principles are not sufficiently protected by the present arrangements; they have demonstrably been placed under pressure where ministers have determined to criticise individual judicial decisions. Further, the Government has proposed legislation on immigration appeals which would place executive action outwith the purview of the judiciary, putting ministers effectively above the law. This legislation was altered under pressure from outspoken judges, but it needn't have been because although the Concordat is supposed to guard against such incursions, it is not itself justiciable in the way that a written constitution would be.
- 5.8.5 Recent events have made clear the need for the UK's chief law officers to be more independent from the government. It must be a damning indictment of the fragility of the arrangements for separated powers that the Attorney General – a government appointee and partisan – could take the final decision on whether to prosecute members of the executive for crimes committed under the Honours (Prevention of Abuses) Act 1925. The Attorney General and Solicitor General are able to make these decisions whilst continuing to provide confidential legal advice to those whose actions might have contravened the law.
- 5.8.6 If confidence in the probity of the arrangements between the Government and its legal advisers is to be restored, it is furthermore essential that that advice is made available publicly, to Parliament as a whole. Without this transparency there is considerable scope for ministers to distort or truncate legal advice for political ends.
- 5.8.7 We welcome proposals in the Government's Green Paper *The Governance of Britain* for certain senior public appointments, such as membership of the Bank of England's Monetary Policy Committee, to be subject to parliamentary scrutiny. This is particularly important where the position is not one which is accountable to ministers. We propose, however, that the Government should go further, subjecting all such appointments to confirmatory hearings by Departmental Select Committees before appointments are made. We believe that it is possible for safeguards to be built into this process which would avoid difficulties with the market sensitivity of such appointments.

6. Devolution and Decentralisation

- 6.0.1 Liberal Democrats have long been committed to devolution and effective local government. We believe that taking decisions as close as practical to the citizen enhances individuals' control over their lives and should enhance participation. Since 1997 there has been a measure of devolution to Scotland and to a lesser extent to Wales, whereas local government in England has increasingly become the agent of central government.
- 6.0.2 *Reforming Governance in the UK* (2000) therefore called for enhanced powers for the Welsh Assembly and argued for regional assemblies to hold accountable the plethora of quangos that have emerged at the regional level. However, while devolution post-1997 has seen the establishment of the Scottish Parliament and Welsh Assembly, with the Scottish Parliament able to pass legislation on a wide range of areas, the UK Parliament in Westminster remains sovereign, and could at any moment abolish both the Scottish and Welsh institutions if it chose to do so.
- 6.0.3 We believe that it is important to understand the ramifications in terms of the division of powers and the institutional arrangements that will be necessary for a decentralised UK to function efficiently and democratically.

6.1 Division of Competences

- 6.1.1 The first issue to be addressed is the distribution of powers (division of competences) between the different levels of government – UK, national, regional and local.⁶ This, coupled with judicial interpretation of constitutional issues, will determine how much power is retained at Westminster and how much effective decentralisation we see. However, the intentions of those who create the systems may not be met in practice. For example, the Canadian system assumes that power lies with the Federal Government unless powers have been specifically referred to lower tiers of governance. Yet, in practice, the system has become increasingly decentralised without any formal re-distribution of powers. This is the mirror image of the United States, which has become increasingly centralised, especially since the 1930s, in part contributing to the misperception that is commonplace in the UK that federalism entails centralisation.
- 6.1.2 There are as many different types of federalism as there are federal polities, including some which are asymmetrical, where the parts do not all enjoy the same powers. The experience of other federal states offers lessons here. Spain, Finland and Portugal all have asymmetrical devolution, with remote islands typically having far more autonomy than the mainland regions. This can work well in practice because none of the sub-national regions seeks to secede. Thus, it is quite plausible that asymmetrical devolution could be expanded in the UK.

6.2 Institutions

- 6.2.1 Separation of powers has been seen more in the breach rather than in the observance in the UK, where the legislature is far too closely controlled by the executive. While

⁶ In this paper we explore the allocation of powers to the federal UK and national levels – further devolution to parishes, districts etc. is properly the responsibility of the State Parties and in the English context is discussed in policy paper 79 *The Power to be Different*.

reforms to enhance the separation of powers are gradually occurring at Westminster, we still need to address the question at the federal and national levels if further decentralisation and federalisation are to occur. In line with our commitment to subsidiarity, we believe that the states should decide for themselves which model of separation of powers they wish to introduce. However, in order to prevent Westminster reclaiming powers, or the states taking over more powers than they have acquired in the new constitutional settlement, the new Supreme Court, created in the Constitutional Reform Act 2005, should be given the power to adjudicate on questions involving the division of competences.

6.3 The English Question

- 6.3.1 During the 1980s, the Conservative Government used its majority in the House of Commons to force through highly controversial legislation that applied only to Scotland, despite the fact that Scottish support for the Tories had substantially declined. Scottish voters were effectively disenfranchised and increasingly frustrated by the government's activities. This gave added urgency to the cause of Scottish devolution.
- 6.3.2 However, devolution to Scotland and Wales has resulted in a new anomaly. Scottish and, to a lesser extent, Welsh MPs can vote in Westminster on legislation that will affect only England. While sometimes the opposite applies, with English MPs voting on legislation only affecting Scotland and Wales, this is far rarer. The issue arises because of the asymmetrical devolution so far introduced in the UK, with the Scottish Parliament having significant law-making powers, the National Assembly for Wales having more control over its own law and policy (though mainly over secondary legislation) and the English having no equivalent separate body.
- 6.3.3 Some advocate giving powers to an English Parliament as a way of overcoming this anomaly. Others believe that while all MPs elected to the UK Parliament deal with UK-wide business, it would be possible for those MPs who represent English constituencies to deal with England only business in a separate forum and as an additional responsibility. To work properly, however, both models would require a separate executive arm for England. Clearly, if a different party were to hold a majority of seats in England to that which had an overall majority in the UK, this would be politically as well as constitutionally imperative.
- 6.3.4 Such a change would alter significantly the role of the UK Parliament in the affairs of the UK, reducing substantially the policy areas over which it had competence. If an English assembly of some kind were to be established within Westminster, composed solely of UK MPs representing English constituencies, inevitably it would be that assembly which dealt with much of the legislative business. On the Scottish model, the new English legislature and executive would gain power over health, education and training, local government, social work, housing, economic development, many aspects of transport law and home affairs (including, the police and the emergency services), and some policy concerning the environment, agriculture, forestry and fishing, sport and the arts, as well as statistics, public registers and records.
- 6.3.5 Importantly though, if the English executive were to be established along these lines, UK fiscal, economic and monetary policy would remain with the UK Parliament, with UK MPs deciding the level of taxation for, and allocation of resources to, each part of the Union. It is likely that an English executive, governing a large proportion of the UK

in such a wide range of areas, would argue strongly that the UK Parliament should not frustrate its policies by agreeing on a financial settlement which has the consent of the UK Parliament as a whole, but not of a majority of English MPs. We believe this problem would be particularly acute if an English executive were not coupled with the arrangements for fiscal federalism we outline in 6.4, and would still be significant even if it were. It is for these reasons that many feel that a substantial layer of English governance – based, as it would be, on such a disproportionate part of the Union – would bring into serious question the continuing role of the UK Parliament and, by extension, of the UK itself, to which Liberal Democrats in England, Scotland and Wales are firmly committed.

- 6.3.6 Liberal Democrats want to see, as far as possible, decisions made, and services delivered, as near to the people and communities concerned as possible. To this end our local government policy paper, *The Power to be Different*, states that local authorities should be “the basic building block of government and public service delivery in England”. However, in the case of decisions and services affecting a large number of communities, or those spread over a large area, it advocates central government handing over powers and responsibilities to regional government. We also state in that paper our support for directly elected regional government in those areas where the public want it.
- 6.3.7 To this end, there is a wider party and national debate to be had as to whether domestic policy for England should be determined at national level or regional level. For many, England has a distinct national identity and they argue that it would entirely justified for there to be an English Parliament or Assembly and an English executive. Others argue that to devolve power from the UK Parliament, which represents c.60 million people, to an English Parliament, representing c.50 million people, would fail to bring government closer to the people and that instead there should be devolution to the English regions or to even smaller units.
- 6.3.8 In light of these arguments we believe that further consideration needs to be given to the mechanics and implications of such a constitutional change, and that any proposed change would require the endorsement of the British electorate. That is why we believe that this matter should be part of the remit of the constitutional convention that this paper advocates in chapter 2. The convention’s proposals, which would include a solution to the English question, would then be put to the UK public in the referendum seeking endorsement of the wider constitutional settlement.

6.4 Financial Issues Associated with Devolution

- 6.4.1 A key challenge of further devolution will be changing the funding system in the UK. The current funding regime throughout the UK is based around grants from Westminster. In the case of both the Scottish Parliament and Welsh Assembly their executives have considerable freedom over the use these grants are put to, while in England much of the grants given to local government are ring-fenced and have to be spent on policies defined by central government.
- 6.4.2 The amount of the grant given to Scotland, Wales and Northern Ireland is decided by the Barnett formula, which was a temporary measure introduced ahead of the expected devolution to Scotland in the late 1970s. The Barnett formula does not redistribute wealth between areas of the UK. Rather it links increases or decreases in

spending in England to proportional changes in the grants to Scotland, Wales and Northern Ireland. It does not decide the overall size of budget or take into account public expenditure need. Indeed it was assumed that devolution would result in the establishment of a more needs-based funding calculation, which never took place due to the no vote in the referendum on a Scottish Parliament in 1979.

- 6.4.3 Liberal Democrats believe that, as well as devolving political power out from Westminster, fiscal power also needs to be devolved from the Treasury if the UK is to have a genuine federal system. While others propose full fiscal autonomy for the devolved governments (where they would raise all the taxes and then remit an agreed amount to Westminster), no other industrialised country has opted for this for a number of reasons. Fiscal federalism, however, avoids the pitfalls of fiscal autonomy and should give the institutions to which power is devolved substantial control over the levers of power controlling funding. That means the devolved institutions should raise as much of their own spending as practicable, and be able to significantly influence the development of their economy. It would also mean establishing agreed rules on such things as prudential borrowing. An essential element therefore of fiscal federalism is for devolved governments to have powers of taxation. Liberal Democrats endorse the principles of fiscal federalism set out in the Steel Commission report, and believe that the Scottish Parliament and Welsh Assembly should have more powers and freedoms to level their own taxes. We are also committed to increasing the percentage of revenue that regional and local authorities in England raise.
- 6.4.4 How fiscal federalism would work has been considered in detail for Scotland in the Steel Commission report. The Commission concluded that fiscal federalism in Scotland would mean the Scottish Parliament is given responsibility for all taxes except for those reserved to the UK, and that this would include the right to abolish and introduce new devolved taxes. Under these proposals the Scottish Parliament would have the ability to vary the rate and tax base for each devolved tax, and the power to borrow, subject to specific criteria. Were the Steel Commission's proposals to be extended, the funding powers devolved to each nation and region would be a matter for each to decide and should be considered alongside work on the legislative and policy powers of the directly elected assembly representing it.
- 6.4.5 As the UK is a diverse country in terms of wealth, income and need, raising a greater proportion of taxation locally means there would have to be an element to redistribution in the interests of national unity and if poorer areas are not forced to have punitively high tax rates or sub-standard services. We believe the Barnett formula should be replaced by a new needs-based equalisation formula – the Revenue Distribution Formula – as set out in Policy Paper 75 *Fairer, Simpler, Greener*. This would take into account factors such as geography, how rural an area is, health, the state of infrastructure, poverty and deprivation and the cost of delivering services. The Formula would be drawn up by a Finance Commission of the Nations and Regions (FCNR). This would be made up of representatives of the UK government and representatives from the National Assembly for Wales, the Northern Ireland Assembly, the Scottish Parliament and the London Assembly, plus those from any English regional chambers or assemblies. It would reach its conclusions by consensus and any proposals would be ratified by the respective executive bodies. As well as agreeing the equalisation formula, the FCNR would also be charged with developing work on the whole agenda of fiscal federalism.

7. The Next Generation: Citizenship for the 21st Century

- 7.0.1 Opinion surveys repeatedly report that conventional parliamentary and party politics hold little appeal for young people. Those under 30 are least likely to vote, and don't appear to be any more likely to vote as they get older. Membership of political parties is falling and ageing. Young people feel more confident about engaging in single-issue organisations than in sustained political activity. Our highly centralised political system seems remote and opaque.
- 7.0.2 Liberal Democrats welcomed the introduction of citizenship education. Its very limited success so far partly reflects the Government's underlying confusion about the definition of citizenship, its rights and obligations – above all about the idea of 'active citizenship'. Active citizenship is not possible unless citizens are encouraged to play a full part in the political and public life of their community; but the shrinkage of elected local bodies over the past 25 years, and their replacement by appointed agencies, has shrunk the public space for citizenship action. Encouragement of students to share responsibilities in school councils, as part of citizenship education, only leads to cynicism if comparable opportunities are denied once they leave school. It is fraudulent to teach citizenship without enlarging the incentives to share in the responsibilities of public life, locally and nationally.
- 7.0.3 Decentralisation of government, a shift back wherever possible from nominated to elected bodies to oversee the provision of public services and a more transparent process of government in Westminster and Whitehall, with simpler language and less antiquated ritual, will all reduce the alienation of younger people from constitutional democracy. We believe that a reduction in the voting age to 16, to overlap with citizenship education in schools, will help to bridge the gap between teaching about citizenship and exercising its rights and obligations. We propose a cross-party approach to teaching about citizenship and national identity, to commit all parties to addressing the problems of popular alienation and to encouraging greater popular engagement with democratic politics. We look to a revival of political citizenship in the UK, re-engaging our disillusioned younger generation in democratic debate and government.

For the People, By the People

This paper has been approved for debate by the Federal Conference by the Federal Policy Committee under the terms of Article 5.4 of the Federal Constitution. Within the policy-making procedure of the Liberal Democrats, the Federal Party determines the policy of the Party in those areas which might reasonably be expected to fall within the remit of the federal institutions in the context of a federal United Kingdom. The Party in England, the Scottish Liberal Democrats, the Welsh Liberal Democrats and the Northern Ireland Local Party determine the policy of the Party on all other issues, except that any or all of them may confer this power upon the Federal Party in any specified area or areas. The Party in England has chosen to pass up policy-making to the Federal level. If approved by Conference, this paper will therefore form the policy of the Federal Party on federal issues and the Party in England on English issues. In appropriate policy areas, Scottish, Welsh and Northern Ireland party policy would take precedence.

Many of the policy papers published by the Liberal Democrats imply modifications to existing government public expenditure priorities. We recognise that it may not be possible to achieve all these proposals in the lifetime of one Parliament. We intend to publish a costings programme, setting out our priorities across all policy areas, closer to the next general election.

Working Group on Better Governance

Note: Membership of the Working Group should not be taken to indicate that every member necessarily agrees with every statement or every proposal in this Paper.

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