



Parliament

10 DOWNING STREET

THE PRIME MINISTER

2 October 1980

Dear Lord Alport,

Thank you for your letter of 10 September, in which you seek the views of the Government on your proposed Constitutional Referendum Bill.

I welcome the opportunity which the Second Reading of your Bill will provide for a serious debate within Parliament on the House of Lords and on the need to maintain a Second Chamber to guarantee our Constitution and liberties. Indeed, I have considerable sympathy with the long-term objective of your Bill.

I do not believe, however, that it would be appropriate to seek to make such a fundamental Constitutional change of the kind you propose by means of a Private Member's Bill. It would therefore be wrong for the Government to lend active support for your Bill or to give any guarantee of its safe passage to the Statute Book. This would be the case whichever House the Bill was introduced in.

As you yourself point out, it would still be open to any future administration to repeal your Act before introducing legislation to abolish the House of Lords. I have no doubt that this specific point and others will be raised during the Second Reading debate but, for the reason that I have given, I wonder if you would consider withdrawing the Bill after Second Reading?

Yours sincerely  
Margaret Thatcher

The Right Honourable  
The Lord Alport, TD DL.



From: The Rt Hon Lord Alport PC TD DL DCL

The Cross House  
Layer de la Haye  
Colchester  
Essex CO2 0JG

10th September, 1980.

The Rt Hon Margaret Thatcher, MP,  
10 Downing Street,  
London S.W.1.

*Dear Prime Minister,*

*R11/9*

Shortly before the Recess I introduced a Constitutional Referendum Bill for First Reading into the House of Lords.

Since then I have revised it, after further thought and consultation with the Clerk of the Parliaments. As now drafted it is, I believe, capable of enactment. I have drawn it to the attention of both the Lord Chancellor and Lord Soames.

The significance of the Bill, if it reaches the Statute Book, is that if any Left Wing Labour Government in the future seeks to introduce legislation to abolish the Second Chamber, it will be compelled to hold a referendum before doing so, or repeal this Act. I need hardly point out the political implications for any Government which the latter would entail. Although a future Bennite administration might further emasculate the powers of the House of Lords and although its composition may be changed, while a Second Chamber exists, the power given to it by the Parliament Act of 1911 to prevent the extension of the life of a Parliament beyond 5 years would be preserved. This is a major constitutional safeguard.

Once an act along these lines is on a Statute Book, the question of reform can be taken at leisure.

It was my intention to introduce the revised Bill into the House of Lords at the beginning of the new Session. I have little doubt that it will get sufficient support to see it through all its stages. I have asked Charles Fletcher Cooke to sponsor it when it reaches the House of Commons. As a Constitutional Bill it will need, if it gets a Second Reading there, to be referred to a Committee of the whole House. Unless it has the support of the Government it is likely to get involved in the annual legislative log-jam. There would therefore be arguments, if the Government felt it worth helping, to introduce it as a private members Bill first into the House of Commons. Charles Fletcher Cooke, as an experienced Queen's Counsel and senior Back-bencher, would be willing to do this. I believe it would be

/Contd.....



- 2 -

acceptable to the younger generation of private Members from such soundings as I have taken.

The object of my approach to you is to obtain guidance as to what would be the attitude of the Government to this Bill, so that I may launch it with the best chance of it receiving the approval of Parliament in due course.

*Yours sincerely*  
*Alfred*

Constitutional Referendum (H.L.)

A

B I L L

INTITULED

An Act to make obligatory the holding of a constitutional referendum before a Bill which contains provisions to abolish the House of Lords or which would deprive it of all legislative powers thereby reducing the Parliament of the United Kingdom to a single legislative chamber, may proceed to a Second Reading in either House of Parliament.

AD 1981

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1 - (1) No bill which is endorsed with the certificate of the Lord Chancellor or Speaker of the House of Commons under subsection (2) of this section that the bill contains provisions to abolish the House of Lords or which would deprive it of all legislative power thereby reducing the Parliament of the United Kingdom to a single legislative chamber, shall proceed to a second reading in either House of Parliament unless more than 40 per cent of the persons entitled to vote in a referendum under section 2 of this Act shall have voted "Yes" in that referendum.

Bills to  
abolish  
House of  
Lords  
subject to  
referendum

(2) If the Lord Chancellor, in the case of a bill introduced into the House of Lords, or the Speaker of the House of Commons, in the case of a bill introduced into that House, is of the opinion that the bill contains provisions to abolish the House of Lords or which would deprive it of all legislative powers thereby reducing the Parliament of the United Kingdom to a single legislative chamber he shall endorse the bill with a certificate to that effect.

(3) Any certificate of the Lord Chancellor or the Speaker of the House of Commons given under subsection (2) of this section shall be conclusive for all purposes and shall not be questioned in any court of law.

2 - (1) A referendum required by section 1 (1) of this Act shall be held in accordance with the Schedule to this Act.

Referendum

(2) If 40 per cent or less of the persons entitled to vote in a referendum under this Act vote "YES" in that referendum no other referendum shall be held under this Act during the period of five years from the date on which the result of the referendum is announced.

3. The House of Lords for the purposes of this Act, means a House of Parliament, however composed, which is additional to the House of Commons.

Interpretation

4. This Act may be cited as the Constitutional Referendum Act 1981.

Short Title

Constitutional Referendum

SCHEDULE

Referendum

Date of Referendum

1. The referendum shall be held on such day, not less than three months after the making of the Order, as Her Majesty may by Order in Council appoint. 5

Persons eligible to vote

2. Those entitled to vote in the referendum shall be:-
- (a) the persons who, at the date of the referendum, would be entitled to vote as electors at a parliamentary election in any constituency in the United Kingdom. 10
  - (b) peers who at that date would be entitled to vote as electors at a local government election in any electoral area in the United Kingdom.

Questions to be asked and form of ballot paper 15

3. The question to be asked in the referendum and the front of the ballot paper to be used for that purpose shall be in the form set out in the Appendix to this Schedule.

Conduct of Referendum

4. Subject to the following provisions of this Schedule, Her Majesty may by Order in Council make provision as to the conduct of the referendum and apply in relation to it, with such modifications or exceptions as may be specified in the Order, any provision of the Representation of the People Acts, any provision of the enactments relating to returning officers and any provision made under any enactment. 20
5. An Order in Council under this Schedule shall not charge any sum on the Consolidated Fund but may provide for the expenses of the returning officers to be defrayed as administrative expenses of the Secretary of State. 25
6. The functions which, in relation to a parliamentary election, are conferred on returning officers by any provision applied by an Order in Council under this Schedule shall in relation to the referendum be discharged by the persons who, in England and Wales under section 40(1)(2) of the Local Government Act 1972, in Scotland under section 17(2) of the Representation of the People Act 1949 and in Northern Ireland under section 17(3) of the Representation of the People Act 1949 are or may discharge the functions of returning officers, at a General Election 35
7. There shall be appointed a Chief Counting Officer, who shall appoint a counting officer for each county and each counting officer shall conduct the counting of votes cast in the county for which he is appointed in accordance with any directions given to him by the Chief Counting Officer. 40

Constitutional Referendum

- 8. The counting officer for each county shall certify the number of ballot papers counted by him and the number of respective answers given by valid votes; and the Chief Counting Officer shall certify the total of the ballot papers and the respective answers for the whole of  
5 the United Kingdom.
- 9. Every county council shall place the service of its counting officers at the disposal of the counting officer for its county; and if the council of any county or the counting officer for any county so requests, the council of any district situated in that county shall place the services of  
10 its officers at the disposal of the counting officer for that county.
- 10. For the purposes of this Act the Province of Northern Ireland shall be deemed to be a county and the duties imposed on a county council in Great Britain by this Schedule shall be  
15 carried out by the Secretary of State for Northern Ireland.

Exclusion of legal proceedings

- 11. No court shall entertain any proceedings for questioning the numbers, as certified by the Chief Counting Officer or any counting officer, or any ballot papers counted or answers given in the referendum.

20 Orders in Council

- 12. No recommendation shall be made to Her Majesty in Council to make an Order under this Schedule until a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

25 APPENDIX

Form of Ballot Paper

Do you want the House of Commons to be the only legislation chamber of the Parliament of the United Kingdom?

Put an (X) in the appropriate box.

30

YES	
NO	



FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE  
AND THE CHIEF WHIP

26th September 1980

Dear Mike

I am writing in reply to your letter to Jim Buckley of 11th September concerning Lord Alport's Constitutional Referendum Bill.

As you know, Lord Alport's Bill was discussed at the meeting held on House of Lords reform and the Party Conference on 24th September. I have since seen copies of the Home Secretary's minute of that meeting and of the letter from the Lord Chancellor to the Prime Minister of 24th September, with which the Lord President is in agreement.

I now enclose a draft reply to Lord Alport's letter, which I have based on both the Home Secretary's minute and the Lord Chancellor's letter. Subject to the optional passage in square brackets in the second paragraph, I have no particular comment on the first three paragraphs. I have, however, submitted two alternative drafts for a possible fourth paragraph because I am not certain how far the specific criticisms of the Bill set out in the Lord Chancellor's letter need to be made in reply to Lord Alport. It is possible that Clive Whitmore, who attended the meeting, may not regard any fourth paragraph as necessary. If this is the case, something along the lines of the last sentence of my second draft might perhaps suffice to conclude the letter.

Yours sincerely  
Michael Pownall

M.G. POWNALL

Prime Minister.

M.A. Pattison, Esq.  
Private Secretary  
10 Downing Street

Here is Lord Soames' draft reply for you to send to Lord Alport. I think the shorter version of the last paragraph is to be preferred. Contact with the draft as amended and microproofing the short last paragraph?

I attach the Lord Chancellor's advice in case you want to look at it again.

MS 29/80



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DRAFT REPLY BY THE PRIME MINISTER TO LORD ALPORT'S LETTER  
OF 10TH SEPTEMBER 1980 ON HIS PROPOSED CONSTITUTIONAL  
REFERENDUM BILL

Thank you for your letter of 10th September, in which you seek  
the views of the Government on your proposed Constitutional  
Referendum Bill.

I welcome the opportunity which the Second Reading of your Bill  
will provide for a serious debate within Parliament on the  
House of Lords and on the need to maintain a Second Chamber  
to guarantee our Constitution and liberties. Indeed, I have  
considerable sympathy with the long-term objective of your Bill.  
~~and I shall read the report of your Second Reading debate with  
interest.~~

*do not believe,*  
I ~~have to say~~, however, that <sup>it would be appropriate to seek to make</sup> such a fundamental Constitutional  
change of the kind ~~which~~ you propose <sup>by means of</sup> ~~is not an appropriate~~  
~~subject for a Private Members Bill. Regardless of which House~~  
~~your Bill is introduced into,~~ <sup>for your Bill</sup> it would therefore be wrong for  
the Government to lend active support ~~or to give any guarantee~~  
of its safe passage to the Statute Book, ~~as this would be the case~~  
~~whenever the Bill was introduced in.~~

~~So far as the specific provisions of your proposed Bill are  
concerned, it would, as you yourself point out, still be open  
to any future administration to repeal your Act before  
introducing legislation to abolish the House of Lords. In  
addition, there must be some doubt as to whether your Bill in  
its present form would be workable. Its provisions would not,  
for instance, apply if a Bill was introduced to deprive the  
House of Lords of most but not all of its legislative powers.  
I have no doubt that these points and others will be raised  
during the Second Reading debate but you may wish, for the  
reasons that I have given, to consider withdrawing the Bill  
after Second Reading.~~

OR

~~As you yourself point out, it would still be open to any  
future administration to repeal your Act before introducing  
legislation to abolish the House of Lords. I have no doubt that  
this specific point and others will be raised during the Second  
Reading debate but, for the reason that I have given, <sup>I wonder if you</sup>  
~~would~~ ~~wish to~~ consider withdrawing the Bill after Second Reading.~~



2.  
 Prime Minister.  
 have some will be  
 coming too and will let  
 you have a days letter to  
 have Alport.

HOUSE OF LORDS,  
 SW1A 0PW

24 September 1980

26ix

My dear Margaret.

Lord Alport's Constitutional Referendum Bill

Play A.

I have seen a copy of Lord Alport's letter of 10th September to you saying that he intends to introduce his revised Constitutional Referendum Bill into the House of Lords at the beginning of the new Session and asking for guidance as to the Government's attitude to it. I understand that you have asked for advice on a possible reply.

I sympathise with the broad objectives which lie behind this Bill and I think we should clearly give Lord Alport a friendly response. Nevertheless, I do not think that we should allow the Bill to make progress and we cannot, therefore, give Lord Alport the kind of assurance which he seeks. If I may, I should like to set out briefly my reasons for reaching this conclusion.

Play B.

My general view is that Bills of a constitutional nature have in practice to be Government Bills and I therefore agree with Norman St. John Stevas that this kind of constitutional change is inappropriate for a Private Members Bill. It is a matter of opinion whether referenda are a desirable political development but, in this case, I doubt whether the proposal would, or could, achieve its objective. Although Lord Alport attempts a modest degree of entrenchment which could involve a Government intent on abolishing the House of Lords in the double task of repealing the Referendum Act and then introducing legislation to do away with the House, the proposal would at best be a flimsy barricade. The Government could simply pack the House of Lords with new creations and pass what legislation it wanted. It is my personal belief that entrenched clauses, capable of being changed only after a referendum, may have a value in a reformed constitution.

The Right Honourable  
 The Prime Minister

/Without such reform,

Without such reform, safeguards of the kind proposed are not capable of dealing with the major issue of the Second Chamber.

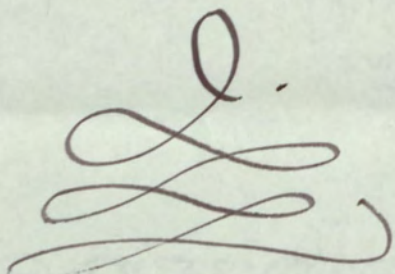
Quite apart from these broad considerations, I doubt whether the Bill in its present form would be workable. A referendum would have to be held if any measure were introduced which would deprive the House of Lords of all legislative power. This is open to abuse in that it would be impossible for the Lord Chancellor or the Speaker to certify a Bill as requiring a referendum which deprived the House of Lords of all power except e.g. the power to pass an Act of Attainder or some other useless, legislative remnant. Almost any scheme would, I think, be open to similar devices or, alternatively, leave the Speaker or Lord Chancellor with an unacceptably wide discretion.

There is one other minor point on the Bill which is perhaps worth making. The framing of the 40% provision is curious because, on the present wording, it would seem that a Bill abolishing the House of Lords could proceed to a second reading if 41% of the electorate voted "yes" and 42% voted "no". I assume that Lord Alport means a majority consisting of not less than 40% and, if so, a drafting change is needed.

For these reasons, I think we should make it clear to Lord Alport that, while the Government could express sympathy for his objectives, it would be unrealistic for him to press on with his Bill. The best course might be to persuade him that it should be withdrawn after a second reading in the House of Lords in the new Session. It is possible that some may suggest the alternative of referring the Bill to a Select Committee as was done in the case of Lord Wade's Bill of Rights. I would be against this course because I think that a reference to a Select Committee would mean that this ineffective proposal remained in the public eye for some considerable time and thus prove embarrassing to the Government. Moreover, I doubt whether a Select Committee would come up with the right sort of answer on an issue of this kind because its attention would be focused on the narrow proposal rather than on the very important wider issues which should be tackled.

I am sending copies of this letter to Willie Whitelaw,  
Christopher Soames, Norman St. John Stevas, Michael Jopling  
and Bertie Denham.

Yrs.

A handwritten signature in dark ink, consisting of a large, stylized initial 'L' followed by several loops and a final flourish.

CONFIDENTIAL

*Mr Pattison 10/10*



Chancellor of the Duchy of Lancaster

*NOT CF*

*? GRP  
SATT*

Lord ALPORT

PRIVY COUNCIL OFFICE  
WHITEHALL LONDON SW1A 2AT

18 September 1980

*✓ MAX*

Dear Michael,

The Chancellor of the Duchy has seen a copy of Mike Pattison's letter of 11 September about Lord Alport's letter of 10 September to the Prime Minister seeking advice on the handling of his Constitutional Referendum Bill.

The Chancellor, while sympathetic to Lord Alport's wider objective in introducing his Bill, is unhappy with its particular form. He believes that a major constitutional change of the kind proposed is an inappropriate subject for a Private Member's Bill.

I am sending copies of this letter to the recipients of Mike Pattison's, and to David Wright in the Cabinet Office.

Yours ever,

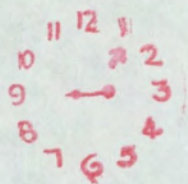
*Robin*

R A Birch  
Private Secretary

Michael Pownall, Esq.,  
Private Secretary  
Leader of the House of Lords  
London, SW1

CONFIDENTIAL

19 SEP 1980



*to Mr. Cow*

2



PRIME MINISTER

PRIME MINISTER

Lord Alport writes to seek advice about the handling of his proposed Constitutional Referendum Bill.

We will let you have a draft reply.

*MAD*

*MT*

11 September 1980

11 September 1980

I am writing on behalf of the Prime Minister to thank you for your letter of 10 September about your Constitutional Referendum Bill.

I shall place this before the Prime Minister and a reply will be sent to you as soon as possible.

MAP

The Rt. Hon. Lord Alport, TD, DL.

RJA





27A  
Lord ALPORT

10 DOWNING STREET

*From the Private Secretary*

11 September 1980

I enclose a letter to the Prime Minister from Lord Alport in which he seeks advice on the handling of his Constitutional Referendum Bill. I should be grateful if, in consultation with others concerned, you could let me have a draft reply for the Prime Minister to consider. It would be helpful if this could reach me by Thursday 25 September.

I am sending copies of this letter and enclosure to Michael Collon (Lord Chancellor's Office), John Halliday (Home Office), Petra Laidlaw (Chancellor of the Duchy of Lancaster's Office) and Murdo Maclean (Chief Whip's Office).

M. A. PATTISON

Jim Buckley, Esq.,  
Lord President's Office.

CH