

The Joint Committee on the Draft House of Lords Reform Bill

Evidence from Simon Hix and Iain McLean

1. We are responding to your call for evidence on the White Paper and Draft Bill, Cm 8077. We are academics with a long-standing interest in this area. We co-authored, with R.J. Johnston, a 2010 report published by the British Academy Policy Centre on electoral systems. IM assisted the Cabinet Office Bill team on the sections of the draft bill that deal with the electoral system and constituency boundaries. He is the author, most recently, of *What's Wrong with the British Constitution?* (Oxford 2010) which proposed a scheme very similar to that embodied in the draft bill. SH is an expert on comparative democratic constitutions, has won several prizes for his research on electoral systems, and was recently appointed to the American Political Science Association's Task Force on Electoral Systems. We are both Fellows of the British Academy.
2. We address a number of the headings in your Call for Evidence. We tackle the first four together, and then add comments on size, electoral system, Bishops, and Ministers.

Background

3. Proposals for a predominantly elected Upper House were in the 2010 election manifestoes of all three large parties, and in the Coalition's Programme for Government. The Liberal Democrats and their predecessors have favoured one since they wrote the Preamble to the Parliament Act 1911. The Conservatives appointed a party committee on the subject chaired by Lord Mackay of Clashfern. Its Report of 1999 produced a scheme which is the direct precursor of the scheme in the draft bill. The Labour Party committed itself to an elected upper house in its 2010 manifesto. Numerous unofficial and official committees of legislators have refined the scheme that now appears in the draft Bill. The elected house of Parliament voted in 2007 in favour of either an 80% elected or a 100% elected upper House. The House of Lords itself has always voted to remain unelected.
4. This is the first occasion on which there has been a cross-party consensus in favour of Upper House reform. The reforms of 1911 were achieved only after two General Elections and the threat of creating peers. The last attempt at comprehensive reform, in 1969, failed through lack of cross-party support.
5. Nevertheless, a number of concerns have been raised, notably in the initial debates in both Houses on the presentation of this draft Bill. Some of these concerns raised doubts about the very idea of an elected Upper House. However, as everybody who voted for any major party in 2010 voted for a manifesto commitment to the principle of an elected upper house, the mandate of the Government to introduce this Bill is unquestionable. We therefore proceed to consider whether the proposals in the draft Bill meet the objections of those who favour an elected upper house in principle but have anxieties signalled by your questions for discussion.

The political make up of an elected house

6. The electoral system proposed in the bill, of regional districts with no greater than 7 members elected in each district, and single-transferable-vote, is likely to lead to a broadly proportional translation of party vote-shares to seat-shares in each region.
7. But, given voting patterns in recent British elections – where there has been a decline in the combined vote-shares of the Conservatives and Labour in recent elections to the Commons, as well as significantly lower combined vote-shares for the two main parties in non-Commons elections (such as elections to the European Parliament, Scottish Parliament, and Welsh and London Assemblies) than in Commons elections – it is highly unlikely that any party would win a majority of seats in an elected House of Lords under the electoral system proposed in the bill.
8. Proportional representation in relatively small districts will make it difficult for small parties or independents to gain any seats. In a district with 5 seats to be elected, for example, a party would need to win at least 1/6th of the votes in the district (almost 17%) to win 1 seat. The Green Party and UKIP may be able to achieve this in some constituencies, but it is unlikely that the BNP will be able to achieve this.
9. There are, nevertheless, two uncertainties in the way elections to the House of Lords might work, as set out in the draft Bill. First, the single-transferable-vote is a strongly ‘candidate-centric’ electoral system, which will encourage candidates to campaign directly to voters, and will favour candidates who have name recognition (e.g. are prominent in the media) or who can raise and spend a significant amount of money in a campaign. In Ireland, for example, STV has allowed many independents to win seats in the Dail (although independent candidates have been less successful in the Australian Senate, which also uses STV).
10. The second source of uncertainty arises from the fact that an election for the House of Lords will be held at the same time as an election for the Commons, which raises the question of what proportion of votes will vote for two different parties in the two elections (which in the US is known as ‘split-ticket’ voting). The proportion of split-ticket voters is likely to be low in the first election, as votes would not have learned yet how they could use their two votes to influence outcomes. In subsequent elections, the proportion of split-ticket voters is likely to rise, and could reach as high as 20%, which is the estimated proportion of voters who changed their votes vote for a two different parties in the 2009 European Parliament election and the 2005 Commons election. One possible consequence of a large proportion of split-ticket voters is a decline in support for the Conservatives and Labour and an increase in support for the Liberal Democrats, UKIP, the Green Party, other smaller parties, and independent candidates.
11. In general, though, the electoral system should ensure that an elected House of Lords is a reasonably pluralist chamber, with a good representation of all the major political views in different parties of the country. Another virtue of the electoral system is that all the major parties are likely to win seats in all regions in the country, which is not the case in the first-past-the-post elections for the House of Commons.

How independent would the Lords be from the Commons?

12. Two opposite concerns have been raised here. One is that, in the lapidary words of Lord Howe of Aberavon (in *Prospect*, May 2004), an elected house would comprise ‘clones of the

- clowns in the Commons'. The other, implied in your second and fourth questions for discussion, is that an elected House would destroy the balance between the Houses; imperil the conventions that govern their relationships; and threaten the primacy of the Commons.
13. An elected house would in fact be less likely than the present House to be a clone of the Commons. The present House contains 199 ex-MPs, out of its total membership of 827; they tend to be among the more active members. Recent voting patterns in the existing house have been quite partisan. Recent research by Meg Russell, at UCL, suggests that 'party voting' in the current House is surprisingly high, and considerably higher than it was before the hereditary Peers were removed. A single 15-year term for an elected Lords, combined with a preferential electoral system (either STV or open-list PR) is likely to ensure that the members of an elected House will be more independently minded than many of the current members.
 14. Also, some parties with significant support in recent elections are not represented in the present House – such as UKIP, the Green Party, and the Scottish National Party.
 15. The long fixed term and "quarantine" (members who have completed their term ineligible to be elected immediately to the Commons) proposed in the Draft Bill mean that elected members, although no doubt mostly elected on a party ticket, will feel less beholden to their party, and particularly to its Whips, than their equivalents in the Commons. As all would-be candidates will know that these are the rules, election is likely to attract people interested in the scrutiny role that is generally regarded as the jewel in the present House's crown.
 16. As to the opposite concern – that an elected Upper House would threaten the primacy of the Commons – we note, first, that the staggered terms in the Draft Bill mean that the mandate of the Commons will always be more recent than that of the upper house – two-thirds of whom will have been elected more than five years ago.
 17. A successor to the non-statutory "Salisbury convention" is urgently needed. That convention in its most recent form derives from the 1945 agreement between Lord Cranborne (later the 5th Marquess of Salisbury) and Lord Addison, respectively leaders of the Conservative and Labour groups in the House at the time.
 18. As stated in a Lords speech by Lord Cranborne in 1945, the convention, or doctrine, states that "it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate."
 19. However, the Liberal Democrats in the present Lords have stated that they were not parties to the agreement in 1945, and do not feel bound by it. Also, the Lords debates on the Parliamentary Voting System and Constituencies Act 2011 show that numerous (especially Labour) members of the existing House no longer feel bound by it either.
 20. Finally, the convention did not envisage a coalition government. Which of the present Coalition's proposals can be deemed to have been "definitely put before the electorate?" One possible answer is "All of them", but that answer raises as many problems as it solves.
 21. Therefore, some body needs to work on a revised convention to cover the extent to which, and the time within which, Government business must get priority in the Lords. This work is needed whether or not the Draft Bill makes progress.
 22. A possible body would be a Joint Committee of both houses, perhaps under the sponsorship of their Speakers. But as the public has an interest in the outcome, it should be open to extensive public consultation.

23. Once both houses have accepted the recommendations of such a body, they should continue to bind an elected upper house.

The size of the proposed House and the ratio of elected to non-elected Members

24. The proposed size of 300, namely half the size of the Commons as it will be after 2015, seems to us to be in the normal and reasonable range for upper houses. However, we would also be relaxed about a House of up to 450 members,
25. An 80% elected house would find it easier to ensure that all the expertise required to scrutinise legislation was available to it than would a 100% elected house.
26. If the house is 80% elected, we support the proposals in the White Paper for a statutory Appointments Commission.

The electoral term

27. We support the 15-year term as proposed in the White Paper, as this would in our view help to recruit the sort of people likely to be able to help the house with its work.
28. Concerns have been expressed about the length of this term. We would be comfortable with its being reduced to, say, 12 or 10 years, but not lower, as that would defeat the purpose of the scheme.

The electoral system

29. Either an STV or an open list system for electing members is acceptable.
30. However, STV becomes unwieldy in a district of more than about 6 seats. Therefore if STV is adopted, it will be important that electoral districts are of this size. How big they have to be will be a function of the decisions on overall House size and the proportion of elected to appointed members. The number of seats to fill at each election could thus range from 80 to perhaps 150.
31. If an open list system is adopted, then the option of using the 12 European Parliament Constituencies – which are also the UK’s “NUTS1” standard regions – as the electoral districts becomes feasible.
32. It will be important to preserve the floor of three seats to be filled in any election in Northern Ireland.
33. Completing the unexpired term of a Member who has resigned or died is easier under open-list (where the seat would normally be filled until the next election by the highest-placed unsuccessful candidate of the same party) than under STV, but we regard this as a secondary issue. Given the purposes of the House, it might be acceptable to leave casual vacancies unfilled until the next election.

Bishops, Ministers, and hereditary peers.

34. The position of Bishops in an elected house is anomalous, whether that house is 100% or 80% elected.
35. If it is 100% elected, then there cannot be a role for any non-elected members. The White Paper implies at paragraph 92 that the Government accepts this.
36. If it is 80% elected, the proposed 12 seats for Church of England bishops (all male, under the church’s current arrangements) would make them by far the largest interest group among the non-elected members. It would be impossible for the Appointment Commission to apply any diversity or range criteria with only perhaps 20 non-Bishops to appoint at each election.

37. There should therefore be no ex-officio religious representatives in an elected house. The Appointments Commission could be charged with ensuring that the House maintains a representative range of religious and non-religious opinion.
38. As to Ministers, we agree with the proposals in paragraphs 67-8 of the White Paper.
39. We agree with the proposals for hereditary peers in the White Paper at paragraphs 87-91. We suggest that all members of the present House, including its hereditary members, should be offered club rights for life.