Reforming the Lords: A step by step guide

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A CONSTITUTION UNIT PAPER

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Executive Summary

Reform of the House of Lords is likely to involve three stages:

1. Legislation to remove the hereditary peers
2. A consolidation stage, to redress the party imbalance, and open up the appointments process
3. Wider reform, involving a review not just of whether the Lords should be elected, but of what role it should play in the new constitutional settlement.

The first two stages are for the current parliament; there is a strong case for holding over stage three until the next.

Stage one

A short bill to remove the hereditary peers is likely to be introduced in the 1998-99 Parliamentary session. The only immediate consequence is how many hereditary peers should be offered life peerages, and how they should be selected.

Stage two

But it will be difficult to avoid addressing the wider consequences of a 'House of
Patronage', in particular how far to redress the continuing party imbalance, and how to
open up appointments. These issues could be referred in stage two to a Joint
Committee of both Houses, charged with developing a new set of conventions to
govern appointments to an all-nominated House of Lords.

The size of the Lords will inexorably increase if full rebalancing takes place in each
parliament, to reflect the votes cast at the previous election. There may need to life peerad752roTand the 10.0or6 Tc 66selected.

An independent, non-parliamentary body offers the best means of exploring the implications of these other changes for the role, functions and composition of the Lords. A Joint Committee of both Houses might then be charged with reviewing its conclusions and developing detailed proposals for the government to implement.

REFORMING THE HOUSE OF LORDS: A STEP BY STEP GUIDE

Introduction

The Labour party was elected to government on the following manifesto promise to reform the House of Lords:

"As an initial self-contained reform, not dependent on further reform in the future, the
right of hereditary peers to sit and vote in the House of Lords will be ended by statute.
This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered.

The system of appointment of life peers to the House of Lords will be reviewed. Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election. We are committed to maintaining an independent cross-bench presence of life peers. No one party should seek
a majority in the House of Lords.

A committee of both Houses of Parliament will be appointed to undertake a wide-ranging
review of possible further change and then to bring forward proposals for reform."

Reform of the Lords will therefore involve at least three stages:

Stage One
Legislation to end the voting and sitting rights of the hereditary peers.
Stage Two
Consolidation of stage one: rebalancing the party composition of the life peers; the development of new conventions for appointing peers.
Stage Three
Wider review of the House of Lords, involving a review of its role, functions and powers, as part of a new constitutional settlement.

Each of the three stages will involve major changes to the second chamber, and throw up a range of difficult issues. This paper considers these issues, and looks at the decision making procedures that will be required to address them. Particular attention will be paid to the role of a joint parliamentary committee, as a means of securing agreement between the parties in both Houses, in carrying forward stages two and three.

Stage One: Removing the hereditary peers

(a) The Bill

The initial Bill to reform the composition of the Lords could be a short one. It would prevent hereditary peers from voting or sitting in the Lords, and enable them to stand or vote in elections to the House of Commons. (See the draft Bill in Appendix A to

(b) 'Knock on' issues

The move to an all-appointed second chamber will expose the composition of the Lords to a far closer and more critical scrutiny than currently. Unless the government intends to move immediately to a more fundamental review of the Lords (stage three), it must aim to secure the legitimacy of the second chamber and address the major issues arising from stage one:

The appointments system

There are two major - and linked - issues that need to be dealt with. The first is whether the base from which members of the Lords are drawn is sufficiently broad, in terms of geographical, social and ethnic groups. The second is the need to reduce the element of patronage, and 'open up' the appointments system. This applies as much to the appointment of party nominees as to the cross-benchers. If the Lords is to become more representative of the overall population, the government needs to encourage greater individual and corporate participation in the nominations procedure (especially in the nomination of people to sit on the cross-benches). Our 1996 report on Reform of the House of Lords proposed a new parliamentary Appointments Commission to lessen the element of patronage in the appointment

Terms of reference
Suggested terms of reference for the joint committee are:

To consider the party balance and other issues which arise following the removal of the hereditary peers from the House of Lords, and to make recommendations, particularly in relation to:

* achieving a more proportionate party balance
* the position in the Lords of the minor parties
* the system of nominations and appointments
* the number of peers necessary for the House of Lords to undertake its functions, and whether
measures are needed to ensure minimum attendance levels

(d) Powers

While the Labour election manifesto ruled out any explicit changes in the Lords' powers as part of stages one and two, the initial reforms may well impact on the second chamber's willingness to use its powers. The Lords currently exercises a self-restraint on account of its large hereditary element, which will almost certainly disappear with the move to a more 'representative' second chamber. The Lords may start to vote down secondary legislation that has passed the Commons, and the Salisbury Convention (whereby the Lords will not deny a second reading to a bill heralded in the government's manifesto) may no longer be observed. This is an issue that the parties should be aware of, although it is not suggested that their discussions on stages ones and two should formally address the powers of the second chamber.

Stage three: Wider reform of the Lords

(a) Catalyst and timetable

Although the Labour election manifesto refers to "a wide ranging review of possible further change" to the Lords, following stages one and two, no timescale has been set for this, and it is not clear what will prompt it. Two scenarios may act as the catalyst.

The first is that the move to an all-appointed second chamber, in spite of any consequential reforms made as part of stage two, undermines its legitimacy. The government might then decide that more fundamental reforms to the Lords' composition are needed, in order to put it on a more secure footing. The second scenario is that the stage two reforms succeed in shoring up the legitimacy of the Lords; a move to stage three would then be a proactive decision by the government to reform the Lords as part of its wider programme of constitutional change. Devolution, electoral reform for the House of Commons, or other elements in the constitutional programme could themselves provide the trigger for further reform of the Lords.

The timescale

However the government may well want to take matters more slowly, to let its own ideas develop and to allow other elements of the new constitutional arrangements to settle down, before deciding what role a fully

the growth of constitutional litigation, and the future of the Lords as the UK's highest court
possible changes to the electoral system for the Commons.

Each of these points will be briefly considered in turn.

Devolution

The function most often proposed for a fully reformed Lords would be to represent the nations and regions of the UK. It is the classic function of second chambers in federal systems: it binds the federation together, by giving the states and provinces a strong stake in the institutions at the centre. But the method of representation can vary:

direct election. In the USA and Australia, directly elected senators represent the people of the different states, not the state government. This model does little to cement federallstate relations

indirect election, as with the German Bundesrat. In Germany it is the state governments which are represented in the Bundesrat; an alternative would be to elect representatives of the state parliaments
appointment, as with the Canadian Senate. The UK's rolling programme of devolution might require that representatives be appointed from those regions which do not initially have devolved assemblies.

European Union

The Lords has a Select Committee on the European communities which does most of its work through five sub committees. It conducts in-depth inquiries, reporting on 15 to 20 documents per session, while the equivalent Commons' committees issue reports on 300 to 400 documents. If desired, the Lords could take more of this burden from the Commons.

European Convention on Human Rights

Parliament will need to develop an enhanced capacity to scrutinise legislation to ensure compliance with the ECHR. The Lords have considerable expertise here, and could contribute to the scrutiny exercise. The Human Rights White Paper (Cm 3782) suggested that parliament establishes a Joint Committee of both Houses, or separate committees for each House, partly for this purpose.

The Law Lords

ECHR, devolution and other constitutional changes will bring more political issues before the courts and may lead to increasing questioning of the presence of the law lords in the legislature. Stage three reform will need to examine the case for a constitutional or supreme court separate from the Appellate Committee of the Lords.

Electoral Reform

The role of the Lords must be complementary to that of the Commons, and if both chambers are elected, it must be on a different basis. It makes no sense to decide on the franchise for an elected Lords until it has been decided whether the electoral

system for the Commons is to change.

Improving existing functions

In addition to such major changes in the Lords' constitutional role, stage three might examine whether the Lords could improve some of its existing functions:

its legislative function: various schemes have been proposed to help the Lords to scrutinise legislation more effectively: two options are pre-legislative scrutiny of bills and special standing committees to consider bills off the floor of the chamber; its select committee role: the success of its two existing select committees - on European legislation and science and technology - have prompted proposals for the scope of the Lords' committee work to be extended, to include areas not covered by the Commons' select committees (e.g. relations between central and local government and justice);
scrutiny of the executive: the Lords has a less important function here than the Commons. Stage three might examine in what ways the Lords could better complement the scrutiny carried out by the Commons; a likely area for consideration will be whether its role in scrutinising secondary legislation and powers should be strengthened.

Powers of the second chamber

Many of these changes in function might be introduced without any increase in the Lords' formal powers. The Commons is unlikely to agree to any significant increase in the Lords' powers, but it will also need to take account of any indirect effects caused by changes to the Lords' composition. Reforms that boost the democratic legitimacy of peers may reduce their inhibition in using existing powers to revise primary legislation and veto secondary legislation. In the light of this, stage three should consider whether:

the period of legislative delay should be altered: the Liberal Democrats, for example, have proposed that the period of delay be increased to two years
the power over secondary legislation should become one of delay rather than veto - only used once, in 1968.

Any increase in the legitimacy and strength of the second chamber increases the risk of deadlock between the two Houses. Stage three will need to consider how to resolve such conflict. Research could profitably be carried out on arrangements in other legislatures (why, for example, is dispute resolution in India's bicameral system relatively successful compared to that in ~ustralia?').

' See The Role of Second Chambers, the report of a Commonwealth Parliamentary Association study
group, 1982

The composition of the second chamber

Stage three of Lords reform would be the appropriate time to consider the size of the Lords. International comparisons suggest the Lords is unnecessarily large: 65% of other second chambers comprise between 11 and 200 members, and only 21% of second chambers comprise over 300 members2. Attendance in the Lords on a typical day in the 1993-94 session was 37g3. Second chambers are generally smaller than first chambers, often about half the size.

A stage three inquiry will almost certainly involve an examination of elected models for the Lords. If the post-stage one - appointed - second chamber is deemed to lack legitimacy, electoral models will be explored as a way of providing that support. If the appointed second chamber already commands a reasonable level of support, the immediate goal of stage three will be transforming the Lords' role; yet elected models will also need to be considered as a means of underpinning this role.

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voters of using potentially two different voting systems will be an important factor in any decision

other topics: the number of representatives per region and the regional boundaries;
the length of members' tenure of office and their terms, including remuneration.

Appointed element

This option will need to be addressed alongside an examination of elected models,
especially if it is thought desirable to retain the cross-benchers, who will only survive
as a result of appointment, not election. If the system of appointment has not -.051 Tc 02 Tc 6.74 0 T been h0.02l.bpe12.the

a non-parliamentary commission: an independent commission would bring in a wider expert constituency to facilitate a broad enquiry into the role of the Lords. Unless MPs and peers had opportunities to comment on the commission's findings,

steer from the government so that its conclusions are broadly in line with government thinking. One option would be for the three main parties and the cross-benches to
each nominate a candidate (probably a senior backbench MP) to sit on the commission,
to ensure a direct parliamentary input into its deliberations, as occurred with the Nolan
Commission.

While a non-parliamentary body might be the best means of exploring possible broad
changes to the role, powers and composition of the Lords, it will be important that
MPs and peers have an input into the decision making process. A joic 13.7TJ -0.0100521 T (joici14 il

ANNEX A: Timescale for Lords reform

Note: As no official timetable for Lords reform has yet been made public, much of this Annex is based
on

ANNEX B: Carrying out stage three reforms

Decision by c the Government to look at broader reform of the Lords

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on comrnission's remit; steer to
commission on parties' views

detailed inter-party talks

independent commission
established; maybe
including MPs, peers

agreement on
principles
between the parties

no agreement on
principles
between the parties

joint committee or inter-party
talks, to explore and develop
commission's proposals

government considers government considers

joint committee to
explore and develop
proposals

government draws
up its