

House of Lords reform: nearly right, but easily improved

By Patrick Dunleavy



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On 17 May 2011, the government published a white paper and draft Bill on reforming the House of Lords, containing proposals for a reformed House of 300 members. 80 percent of the Lords would be elected under the new system, the transition to which would be phased in over three electoral cycles beginning in 2015.

The government's draft Bill on reform of the House of Lords shows tremendous progress in coming up with a workmanlike road forward. Nick Clegg now has a set of reform proposals that are four fifths of the way to being a coherent, principled and genuinely worthwhile reform - and one that meets the pledges made to the electorate at the 2010 general election by the top three political parties. My table below shows how far the Coalition's thinking has come, and yet what further movement it still needs to make to achieve a fully democratically accountable upper chamber.

The essence of the government proposal is to elect the vast bulk of the reformed chamber in large constituencies, using the regional

seats already employed for electing the UK's members of the European Parliament. One of the options still for debate between the coalition parties is whether the new Senate should be 100% elected, or only 80% elected members, with the remaining fifth appointed by a non-partisan commission. The proposals for electoral arrangements strongly resemble the detailed schema for electing the Lords that Helen Margetts and I set out for Lord Wakeham's dreadful Royal Commission on the Lords in 1999, which ignored all elections to create the current all-appointed House.

The draft Bill proposes to create a strongly static balance of parties in the new house by proposing that members are only elected a third at a time, which in turn means that to get proportional elections a large Senate of 300 plus members is needed. (Given the size of the smallest UK regions, you cannot elect much less than 100 members at a time and still represent a fair balance of votes in each region). Each member would be elected once only and would never be able to stand for re-election, that is, a single term limit. The government's intention here is clearly to try and create an upper house where elected legislators are yet not tied in loyalty to their political parties. More independent-minded legislators are seen as being the ones we need for a Senate that is still essentially intended to serve as a revising and scrutinizing chamber. Yet, single-terms of office are a highly unusual requirement, found in very few other legislatures across the world. The

main case is the Mexican legislature, where single term limits are widely blamed for corrosive corruption, because a legislator who cannot be re-elected has nothing to lose from being corrupt. Now the British political elite are always quick to suggest that nothing like this can possibly happen here, not with "people like us" around. But the expenses scandals around MPs and peers in the last two years strongly indicates the contrary - that is you place people in temptation's way, a goodly proportion of them will follow Oscar Wilde and succumb. So the government's single-term proposal is a constitutional risk of the first order, one that the UK should not take.

The government proposes that elections will take place on the same day as general elections, because that will maximize the numbers of people who will vote in the new Senate elections, a strong democratic rationale. However, the top three parties (Conservatives, Labour and Liberal Democrats) also know that the general election context is the most favourable for them. In particular, it tends to strongly suppress votes for the UK's smaller fourth, fifth and so on parties - whose votes would clearly be higher if Senate election took place on a fixed four year term, like those for the Scottish Parliament, Welsh Assembly and Greater London Authority.

Electing on general election days means that the government's draft bill cannot specify exactly how long a member of the new Senate

Aspect	Current House of Lords	Government draft bill for reformed House	Change still needed for a fully democratic Senate
Number of members	789 – many of whom never show up to debates	300 plus	180 to 220
How do members get there?	All appointed (plus remnants of hereditary peers)	Either: 80% elected and 20% appointed by non-political commission Or: 100% elected	100% elected
Years in legislature?	Until death	Three general election periods, (i.e. from 6 to 15 years)	Two general election periods, (i.e. from 4 to 10 years)
How many times can you stand for office?	See above – you only exit when you die	Once only – you can never be re-elected	Twice – you can be re-elected once
When are new members added?	Whenever the government needs to win votes	One third of members are elected at a time	Half of members are elected at a time
System of election used?	None	Either: List proportional representation system Or: Single Transferable Vote (STV)	Simple to use, List PR voting system
Who do members represent?	Themselves	Government standard regions in England, and the nations of Scotland, Wales and Northern Ireland, that is multi-member constituencies of between 1.5 and 8 million people, as for MEPs at present	
When will elections take place?	Never	On the same days as general elections	
Timetable for reform	Never	2015 – first elections 2025 – fully reformed	2015 – first elections 2020 – fully reformed

will sit for. If a general election takes place inside of two years, then they do not trigger an election of the next wave of senators due to be replaced. But once a Parliament has gone beyond two years, that counts for this purpose. And of course each Parliament can only last a maximum of five years. So depending on how things work out, an unlucky senator could sit for as little as six years, while a lucky one (who lasts through three five-year Parliaments) could be there for a decade and a half.

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This would be a hugely long term during which senators never have to return and face the voters who chose them, and are not removable in any way through popular action. (In fact, if a tranche of senators got really lucky and interspersed five year Parliaments with a couple of near-two-year short Parliaments at the right times, they could stay in the upper chamber for almost 19 years).

Put such huge periods in office with the draft Bill's single term limit for senators and we run the risk of creating a dynamite cocktail of provisions. In (re)writing a constitution we absolutely must plan for all contingencies, not just those deemed likely. So we need to allow for rogue legislators, and groups of sophisticated rogue legislators, as much as for well-behaved ones - and for extraordinary situations as well as routine times. The new Senate would have proper rules of conduct for the first time, and senators would be removable if misconduct is clear and proven. But the organization of ongoing corrupt practices is easy to do inside strong rules - as the UK has repeatedly proved with the effective purchase of honour, including seats in the House of Lords. We should not risk constituting a whole upper house where every member knows that they will never have to face the voters again, and they could last in power for a decade and a half, with only a modicum of guile and skill.

Improving the government's proposals

If the remaining problems with the current draft Bill are obvious, they are also easily solved. The key thing is to reduce the size of the Senate to its smallest feasible scale, which is around 180 to 220 members - which minimizes both the total number of elected politicians at Westminster and the costs of an elected upper house. The chamber can also be very safely elected a half at a time (not in thirds), because the government has accepted the need for proportional representation elections. And under any realistic scenario, in today's multi-party politics two PR elections in the UK are never likely to result in an upper house with a clear overall majority for any one party.

Even if we assume (as we should) that the top three parties (or four parties in Scotland, Wales and Northern Ireland) will do well in Senate elections held on the same day as general elections, under PR a party can only achieve absolute majority if it is doing incredibly well - and it would have to do that twice in a row. Inherently, a PR-elected upper chamber is likely to be permanently "hung", creating the optimal conditions for it to operate its revising chamber role effectively. Governments will need to have rational argument and evidence on their side to carry through their legislation, but the Commons will

retain the ability to enforce a majority party's view - especially if five year Parliaments become the norm as the Coalition expects.

Electing members in halves also means that the term of office for senators would fall to between four years (if they held office in two short-Parliaments only) and ten years (if they held office for two full-term Parliaments). This reduction also opens up the chance to get rid of the highly objectionable single term limit, and to opt for the term limit widely seen as optimal in US politics and in academic analyses also - namely two terms. That means that senators would have the chance to be re-elected once, but they could not go on and on, as MPs do, and so would not be professional career politicians and nothing else.

In terms of the electoral system to be used the government's draft Bill suggests that the single transferable vote (STV) could be used in the large regional constituencies and technically this is (just) feasible. However, the White Paper is clear that the government also considered and could live with a system of open list PR elections - which allows voters to scan a list of candidates offered by each party in the large regional constituencies and to vote individually for the candidate they most prefer, using a single X vote. Here voters can rearrange the order in which candidates get elected from each party's list. (This is unlike the UK's European Parliament elections, which uses a 'closed list' PR system where the order of candidates is set by the political parties alone). Each party then wins seats off their reordered list of candidates in proportion to their share of the vote.

An open list PR system means that voters are ultimately in control. Parties have strong incentives to select their most popular candidates to head their list - this is always the best strategy for any party trying to

maximise its votes in a PR election. Open list PR provides a strong protection against parties trying to pack their lists with "hacks" or "has-been" politicians, and instead to seek popular and credible candidates. It also creates a strong basis for individual senators to seek re-election on their own, distinctive record of voting independently for the public interest.

So there are three highly compelling reasons for the Liberal Democrats to back off, and not to insist on reform going down the STV route - opting instead for the government Bill's alternative option of open List PR. The first is that this is far simpler for voters to operate and to count, and a version of List PR already works well for the UK's European Parliament elections. The second reason is that if Senate elections are

held on the same day as general elections, having two X vote elections would be strongly preferable for voters - while mixing up numerical voting with STV and X voting would be highly confusing.

The Scottish parliament elections of 2008 coincided with new STV local elections for Scottish local governments, and created unprecedented problems that should never have been allowed to happen. Finally, of course, voters have just strongly rejected numerical preference voting for AV in the May 2011 referendum, so that the Liberal Democrats would be well advised not to try again with STV.

The only other change needed is for Nick Clegg and the Liberal Democrats to take their courage in their hands and to insist at their party conference in September that only a 100 per cent elected Senate will be democratically credible and acceptable for public opinion. An 80 per cent elected upper house would undermine the whole point of elections by creating a completely unaccountable and irremovable subset of legislators, again opening the way for the taint of corruption and social exclusion that has so disfigured the Lords over many decades. The Liberal Democrats should concede on open list PR elections and not STV, but demand in return that the new Senate is a wholly elected chamber.

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A reformed House. Changes are in waiting for the Lords, but disputes remain over its proposed composition and mode of election.

This article has previously been published in the report "The end of the peer show? Responses to the draft bill on Lords reform" (2011) by the think tank CentreForum. For more information see www.centreforum.org

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