

'Is the House of Lords an effective second chamber?'

Electoral Reform Society submission to Public Administration and Constitutional Affairs Committee (PACAC) Inquiry on the Size and Composition of the House of Lords



Evidence from Katie Ghose, Chief Executive – Electoral Reform Society, on behalf of the Society

January 10th, 2017

1. The Electoral Reform Society was founded in 1884 and has over 100 years of experience and knowledge of democratic processes and institutions. As an independent campaigning organisation working for a better democracy in the UK we believe voters should be at the heart of British politics. The Society works to improve the health of our democracy, with a mission to ensure that every voice is heard, every vote is valued equally, and every citizen is empowered to take part.
2. The Electoral Reform Society welcomes the Political and Constitutional Reform Committee's inquiry into the next steps for Lords reform, but is concerned that by focusing on smaller scale changes to membership, minor reforms, when seen as ends in themselves, fail to address the main issue of the democratic deficit. The first and most pressing issue for Lords reform is giving the upper house real democratic legitimacy, while ensuring independence and representativeness, in order to be a truly effective scrutineer of the Executive.
3. ERS believes in building a better democracy that gives a voice to citizens across the UK and in which politicians are held to account. A parliament in which the second chamber is populated exclusively by members appointed through political patronage, and religious or hereditary elites, has no place in our democratic present or in its future.
4. However, the Society does agree that size is an important factor in the functioning of the upper house and welcomes moves to look at this issue on the understanding that this would be a stepping stone to a smaller, proportionally-elected second chamber.
5. It is well known that with over 800 Peers to just 650 MPs – soon to be 600 – unelected lawmakers already outnumber our elected representatives. This is, as many Peers now recognise, an unacceptable situation. The current upper house is grossly oversized and growing unstably as each incoming Prime Minister moves to restore party balance by increasing the number of peers.
6. The Society believes that a smaller chamber is necessary to perform as an effective and efficient revising chamber in which all members are active participants. Practical moves towards this must be welcomed, but should not and cannot be seen as a replacement for substantial reform.
7. Some such 'stepping stone' mechanisms for reducing the size of the House of Lords at present, would include:
 - a. No longer replacing hereditary peers in the House of Lords when they pass away. The current system is archaic, and undermines faith in the political process and Parliament. The decision by both Peers and the government not to support the House of Lords Act 1999 (Amendment) Bill 2016-17 in December 2016 was disappointing in this respect, and the issue should be raised again.
 - b. Introducing measures to remove persistent non-attendees – for example, those who do not attend for a whole session without being on leave of absence
 - c. Investigating the introduction of a retirement age and/or term limits
 - d. An internal ballot of Peers within each group to decide who should temporarily stay within a smaller chamber, with numbers capped
 - e. A greater role for the House of Lords Appointments Commission – including power to interview witnesses, and greater representation of non-aligned citizens – would be an important step, but doesn't deal with the fundamental problems of the House and the appointments system per se.
8. As there is a partisan imbalance in the current make-up of the Lords – in particular with regards to the attrition rate – some sort of mechanism for reducing the upper chamber's size in line with a just partisan

(and non-partisan) distribution would be helpful alongside the necessary reduction in size. Failure to reach consensus on this should not be used as a reason to reject other reforms regarding size or election however. Moreover, addressing the partisan imbalance without dealing with the size issue would be a recipe for further growth: to rebalance the upper chamber strictly in line with the 2015 General Election results would require the appointment of an additional 723 members.

9. Fixed-term appointments for the upper house have both benefits and disadvantages. Many of the benefits of term-limits only apply to elected representatives (such as mitigating against corruption and ensuring a more diverse group of people are elected to high office). However, the problems of high turnover and loss of experience would apply for appointed as well as elected representatives and, if term limits were only applied to new peers, could create a two tier chamber. Election would provide a better resolution to the problem of 'peerages for life' – a situation which does nothing to hold ineffective Peers or those who don't attend to account. We believe a single 15-year term would be an appropriate threshold, something we supported in the House of Lords Reform Bill 2012.
10. There is also a major issue of lack of independence which is often not addressed when it comes to Lords reform. In the 2014-15 session, 92% of party-political Peers participated in more than 10 votes, compared to just 55% of all Crossbenchers, while a quarter of appointments to the House of Lords between 1997 and 2015 were former MPs. Reforms – and elections – should take into account the need to improve independence and potentially the role of non-affiliated Peers.
11. Apart from size, there are issues with the representativeness of the upper house that are not addressed by the reforms discussed in this inquiry. The House of Lords, despite some modest progress in recent years, fails to represent the British public in a number of ways. Research by the ERS in mid-2015 showed that over a third of Lords (34%) previously worked in politics, compared to just 1% who come from manual backgrounds. This substantially limits the Lords' expertise and experience on key sectors of the economy and swathes of the British public¹. Similarly, 44% of Lords list their main addresses in London and the South East, while 54% are 70 or older. For the Lords to continue as an effective sense-check to parliament it must move with the times and include amongst its members those from a diversity of backgrounds and opinion. An elected house would help to open up the house to a more diverse membership, although any steps to improve representativeness in the meantime would be welcomed.
12. Moreover, improving public faith in the role of the Lords (and therefore Peers' collective clout) can be improved through greater transparency. A better-regulated system for checking-in/out would be welcome: the public should be able to know if Peers are genuinely fulfilling their duties when claiming the allowance. Making the allowance contingent on actual proven attendance to debates and committee meetings could be one way of ensuring this. However, a smaller, elected chamber (of around 300 salaried members) would remove this issue altogether – every member would be expected to contribute on a daily basis.
13. The Society strongly believes that a reformed second chamber should fairly represent the diversity and regions within the UK. Dealing with unrepresentativeness by age is just one part of the picture. The ERS believes that the most effective way to elect a second chamber would be using the Single Transferable Vote (STV) form of proportional representation. This would allow voters across the nations and regions of the United Kingdom to choose a range of elected individuals. As it is to be taken as a starting principle that the Lords' ability to conduct effective scrutiny of Government legislation must be preserved and enhanced by any reform, an upper house elected via STV would weaken party control over who gets seats in the Lords, allowing more freedom to adequately scrutinise legislation. The importance of using STV over a list system is that it is voters rather than parties (and their executives) who decide who is elected under STV. One argument often used in favour of the current arrangements with the House of Lords is that it provides for independent experts to provide advice and scrutiny. STV would provide for this because it gives voters the opportunity to vote for such individuals, in addition or separate to whichever political party they normally support.
14. Establishing and codifying principles to determine the relative numerical strengths of the different party groups in the House of Lords would be a welcome addition. More importantly, the independence of the

¹ See the ERS' 'House of Lords: Fact Vs Fiction' report here (August 2015): <http://www.electoral-reform.org.uk/blog/its-official-house-lords-completely-bust>

upper chamber and the balance between party and crossbench MPs should be considered as part of any codification. No party should have an overall majority in the House of Lords. It should be a forum where all interests are heard but none dominate. Moves to enshrine this in convention/legislation would be an important guarantor of effective scrutiny.

15. The reforms addressed by the Lords in recent months may help reduce the size of the chamber and prevent a large increase in the future. However, they do not come close to addressing all the democratic problems with the House of Lords, and crucially do not touch the central and pressing problem of democratic legitimacy. BMG polling for the ERS at the end of 2015 showed that just 10% of the public think that the House of Lords should remain a fully-unelected chamber². The largest group, 48% of the public, think the Lords should be an elected chamber, while 22% back abolition – such is the scale of the chamber’s challenge in the 21st century and the perceived disconnect.
16. A reduction in the size of the Lords must be seen as the next staging post for reform, on the way to a smaller, democratically legitimate upper house that can command the confidence of the public. Reducing numbers can’t be an excuse for failing to properly reform the Lords. Codifying the Lords’ scrutinising role would cement the Lords’ position as a vital secondary check on the Executive.
17. This inquiry is to be welcomed. Given the long-standing and strong public support for reform, alongside manifesto beliefs from all major parties for a reformed (and elected) upper chamber, we look forward to seeing action on this front. The principles of reform are clear, particularly in light of public disquiet over the cost and ineffectiveness of an over-sized upper chamber. Public involvement (for example, through a citizens’ assembly or constitutional convention) could help to flesh out the details, for example looking at the scale of support and options for regional representation. It is clear that the House of Lords needs a major overhaul, not tinkering around the edges. Restoring public confidence and thereby shaping a more effective upper house necessitates a slimmed-down, fairly-elected upper chamber where the people who vote on our laws are elected by the public.
18. The ERS was pleased to work with government ministers during debate surrounding the last major reform Bill (2012), providing evidence and input on electoral system and other matters on how to make reform happen. This submission is therefore a summary of our position, and we would be pleased to provide supplementary evidence to the Committee, in person or in writing, on any aspects of particular interest.

² See full polling here http://electoral-reform.org.uk/sites/default/files/BMG%20Lords%20Reform%20Polling%20Cross-Tabs%20October%202015_0.pdf