THE HOUSE OF LORDS

Reforming the Second Chamber

Policy Consultation
Explanatory Notes

This is a Public Consultation document released by the Democratic Unionist Party.

None of the proposals within it constitute present party policy.

The final policy position will be adopted by Party Officers at the end of external as well as internal engagement processes.

If you want to contribute to this consultation you can:

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If you wish to request a meeting to discuss these proposals email or call (028) 906 54479.

Deadline for responses is Friday 11th October 2019.
INTRODUCTION

The national British political system has a bicameral Parliament. As with all aspects of our ‘unwritten’ constitution it has evolved over time with its powers changed significantly in 1911 and 1949. The nature of our constitution provides flexibility. It is an ever-evolving concept and one that can be adapted readily to accept House of Lords reform. This is something which we have perhaps failed to capitalise more on in the past. While tradition plays a huge role within British politics, our system of government has never been that of maintaining the status quo to the detriment of progress.

The last twenty years have seen substantive changes to its make up with a significant shift away from hereditary to life peers. However, the scope of the resulting changes always remains less ambitious than the original proposals. While there is a clear majority for an elected element to the House of Lords, it has remained the reform too far with disagreement on the scale of it.

The unusual pattern of British politics in the last 15 years - Brown’s “Government of All the Talents”, the Coalition government, the small Tory majority and the now minority government – has resulted in a significant number of life peer appointments. This has resulted in the House of Lords becoming too big and is now significantly larger than the House of Commons – a disparity that will increase if the new 600 seat parliament is implemented. Present mechanisms to reduce its size do not deal with this problem sufficiently.

Is there value to a stronger chamber?

This is much more subject to debate about whether a reformed second house should maintain its role as an amending body with the limitations it operates on government manifesto commitments.

This has partially been driven by the fact that the second chamber lacked direct democratic legitimacy. The experience of recent reforms is that the shift away from hereditary peers did lead to greater challenge from the second house and that government practice changed to take account of this. Therefore, the mere act of reform will likely produce greater challenge within the existing power framework.

This paper sets out what the DUP approach would be for:
• Short-term measures – There are presently no major proposals for reform to the House of Lords but we set out the DUP’s position on the present ‘housekeeping’ changes to the House of Lords.

• Substantive reform – The topic will undoubtedly be returned to and Brexit has once again brought in to focus the role of the second chamber.
Short-term measures

The case for short-term measures is:

- The topic of House of Lords reform is not a public priority so it is questionable whether or not it should be a significant focus of Parliamentary time. This is essentially the position that was adopted by the present Government in its 2017 manifesto and how it has acted in Government.
- All major attempts of House of Lords reform have broadly failed and thus the conclusion that there is little value in attempting it is understandable but unlikely to be sustainable in the longer-run.
- In the absence of fully developed proposals for reform and in recognition of our constitutional traditions and practices the House of Lords continue to operate as is but a number of measures are required.
- The small-scale changes required should have the following elements:
  - The numbers should be reduced to less than the House of Commons.
  - To achieve this number, the present situation two out one in should be enhanced to three out one in.
  - For new Members of the House of Lords there should be a term limit maximum of 15 years.
  - The role of the Speaker should be enhanced, granting him the power to maintain greater discipline in the House. This would be a building block to greater reform later.
  - Peers residing outside the greater London area should have their accommodation expenses reviewed. There is a pro-London and anti-regional bias in the present arrangements.
**Substantive reform**

The DUP considers the following as the way forward for the substantive reform of the House of Lords.

**Principles for reform**

The proposals below are based on five principles:

1. **A stronger voice for regions and nations** – the shift to stronger nations and regions has not been reflected in the national Parliament. An element of reform must inject a stronger element of this and complement the devolution settlement.

2. **Democratic element** – the membership of the second chamber should primarily have a democratic basis with some checks to prevent it from being an alternative House of Commons.

3. **Constitutional tradition** – in any process of reform there needs to be recognition of where your country has come from. The United Kingdom maintains both a monarchy and an established church. Therefore, a reformed house will maintain recognition of the hereditary principle and the position on the Anglican Church. Peerages should remain part of our honours system. However, recognition of this principle does not make them immune from changes to the second chamber.

4. **Knowledge Base** – The existing and future knowledge base of people with expertise in a range of fields is of value to the legislative process and thus mechanisms for this developed.

5. **Smaller** – the second chamber should be reduced in size and always be smaller than the first chamber.

From these core principles, proposals for a new second chamber would be:

1. It would continue to be called ‘The House of Lords’.

2. It would be reduced in size to smaller than the House of Commons. The plan below is based on a projected membership of 576 but if need be flexibility can be shown on this. This reduction will occur at the start of the next Parliament following passage of the necessary legislation.

3. 400 of those members (Lords-elect) would be elected from regional lists and a weighting to empower the regions. (almost 70% of the total membership) and this strengthening of regional representation would end the practice of EVEL in the House of Commons.

4. 150 will be made up of Life Peers and Hereditary peers. Lords Spiritual would be retained. (Options for the make-up of this are set out below.)

5. Lords-elect would be a full-time paid role.
6. Other peers would be remunerated on a per diem basis at present but with recognition for the greater costs incurred by those from outside Greater London.

7. The Second House would cease to be self-regulating and included in the existing arrangements for the House of Commons.

8. The operation of the second chamber will have to change to reflect its more democratic basis with Speaker gaining a greater role in managing the debates than at present.

9. The standing orders of the second chamber will include recognition of the commitment not to block manifesto commitments.

10. Options for increasing its powers are set out below.

Legislation

Legislation should be brought forward that would establish a reformed House of Lords from the next Parliamentary election. This will achieve any outstanding reduction in size in one complete action not over a prolonged period of time.

Membership of the House of Lords

Lords-Elect

- There will be 400 elected positions.
- The elected members will have the title of Lord-elect.
- They would be elected for a Parliamentary term.
- Each registered party will nominate a regional list by the close of nominations. The precedent of regional lists for electoral purposes was established in Scottish and Welsh devolution. However, changes to electoral systems can prove unwelcome by the broad electorate so there would need to be a public awareness and education campaign explaining it.
- Each nation (Scotland, Wales and Northern Ireland) and the 8 English regions will have a baseline representation of 20 and then a population top up – Northern Ireland +5 seats (25) Wales +9 seats (29) Scot +15 seats (35) England +151 seats (311). The absence of regional representation for England makes election by devolved institutions inappropriate. Additionally, as the second chamber is about the national programme of governance, it is more appropriate that its election should take place at the same time. The English constituencies would be allocated to the 8 different regions by the Boundary Commission to ensure the closest proximity with parliamentary boundaries.
- The aim of this regional strengthening is twofold - to strengthen the regions’ voice in national institutions complementing the devolved settlements and make national parties
strive for a greater national mandate in elections. A consequence of this would be any party refusing to take its seats would see its allocation going to other parties in that region.

• To further empower the voice of the English regions, individual Joint Committees of both Houses should be established on a permanent basis.

• In terms of the system of election, it must be recognised that there is a tension in creating a democratic element in the second chamber and the requirement for a national government to get its mandate passed. This has potential impacts on how the regional lists would be selected. There are three options:

  1) The regional seats are allocated in proportion to the MPs elected in each region. This assists larger parties and should assist the government voice being stronger in the second chamber.

  2) The regional seats are allocated based upon the votes cast for the different parties in that region using a system of proportionality.

  3) Voters are given a second vote. The system of voting could be for a particular party or for an individual on the respective party lists.

Option 1 would be the preferred choice. Options 2 and 3 would enable smaller parties to be elected to the second chamber even though they failed to get elected to the House of Commons. This would probably risk creating greater tensions between the two Houses in their operation as it would be the only influence smaller parties would have to operate and an opportunity to raise their profile.

For smaller parties, Option 3 would look the best means of allocating their limited resources rather than at a Parliamentary constituency level potentially increasing the divergence in results. It also adds to the administration of an election and new system for voters that does not seem truly necessary.

This empowerment of the regions and the English regions in particular, should facilitate the end of the EVEL practices in the House of Commons and ending the lesser status of non-English MPs.

• Remuneration would be set at either a proportion of a MP’s salary (e.g. two thirds) or an average of the four Parliaments and Assemblies of the United Kingdom, whichever is lower. They would be included in the Parliamentary Pension Scheme. They would not be allowed to hold a dual mandate with the devolved institutions.

• To maximise the retention of the existing knowledge base of Life peers, they would be entitled to be included in party regional lists. If elected they would be referred to as a Lord during their term but have the rights etc of a Lord-elect.
In past proposals for reform there has been concern about people using the second chamber as a ladder to the first chamber. First, this is a potential consequence of adding a democratic element and thus an argument against democratisation. Second, the proposals to counter this have ended up convoluted, complex and legally dubious. Therefore, the aim should be to impair rather than seek to prevent entirely. To achieve this:

- Those appearing on a regional list cannot be a Parliamentary candidate in the same election.
- Lords-elect would only receive support for one part-time member of staff.
- Lords-elect would not receive any support for a constituency office.
- Lords-elect would be barred from establishing a campaign fund etc. to employ more staff or establish a constituency office.

Arguably pay parity between both houses would reduce the financial incentive to seek election to the House of Commons. However, the difference and distinction in roles does not justify it. Equally, a bar on a Lord-elect standing in the first House of Commons election after their election to the House of Lords has been raised. However, this would be very open to a successful legal challenge as an impairment of an individual’s democratic rights.

Casual vacancies will be filled by the nominating officer of the party in question.

Lords

- The reforms would create two categories of peers - ‘working’ life peers and ‘non-working’ life peers. The working and non-working terms are not formal titles but for purposes of explanation
- There would be 150 working life peers and the Lords Spiritual.
- Existing and new Life peers would join party caucuses of peers or a cross-bencher caucus.
- Life peerages would continue as part of the honour system with party nominations and the present system for independent cross-benchers maintained. Party nominees and cross-benchers will join the respective caucuses. 100 of the 150 Lords should be drawn from the party and cross-bencher caucuses of Life peers. 4 would be Prime Ministerial appointments from Life peers. If this power were not created, they would be added to the total drawn from the caucuses. 46 would be from the life peers.
- One fifth of working life peers should be reserved for cross-benchers. The cross benchers would be elected in the same manner as the hereditary peers. The remaining would be allocated across the parties in proportion to their strengths in the House of Commons.
• There is a question of how fluid the period of ‘working’ for a life peer should be. It would provide maximum continuity for it to be a full Parliamentary term. However, while a government is elected for a 5-year Parliamentary term it is the Queen’s Speech which defines the legislative programme. Thus, the nature of the programme can change significantly in each Queen’s speech period. Therefore, what provides the best use of the knowledge base of all the life peers:

(a) Caucus selections are determined for a parliamentary term.
(b) Caucus selections are for each Queen’s Speech period. This would enable the individuals to change as most appropriate to the legislative programme. It would also mean generally smaller and more focused time commitment from ‘working’ life peers and call upon a greater part of the life peer ‘pool’. However, there are greater issues of practicality.
(c) Both of the above options could be combined with some selected for a full term and some for a Queen’s Speech period.

• With the aim of reinforcing the independence of the HoL, under option (a) Cross-benchers could be elected for two terms and under option (b) elected for the full Parliamentary term.
• Working life peers would have the same rights in the chamber and legislative process as a Lord-elect (subject to an option below).
• ‘Working’ life peers would receive a per diem payment. However, this system would be reformed to take account of those who live outside the greater London area.
• Hereditary peers chosen by election would be reduced by half to 46 and selected under the same provisions as now. The issue of legal impediments to inheritance by females needs to be addressed.
• As a further means of maintaining the knowledge base, ‘non-working’ life peers would retain speaking rights and the ability to publish amendments. If a legislative topic was of particular interest, they could still contribute to the debate but they would not hold voting rights and their amendments could only be taken forward if a Lord-elect or working life peers chose to do so. They would not receive a per diem payment as this could lead to ‘abuse’ of this privilege for recompense.
• Casual vacancies will be filled by the next peer on the list of the caucus vote.

The Operation of the House of Lords

• There are three areas of change that the greater democratisation of the second chamber would require:
Salisbury Convention – This would need greater formal recognition. This can be done in two ways – the Standing Orders of the House of Lords to reflect it or put it on a legislative basis. The legislative basis would ultimately involve courts making deeply party-political decisions and would not fit within the broad traditions of our constitution where judicial power is a check on the legislature not a legislator. Further Judicial activism is a trend that should not be encouraged. Thus, the lesser alternative of a reform of Standing Orders would be the preferred path.

Harmonisation of the regulatory framework – The separate standards systems for both Houses should end with a single Commissioner overseeing a new standards regime based on the present system for the House of Commons and the extra limitations placed on Lords-elect. A single Commissioner would assist in maintaining a consistency in decision-making in both Houses.

The Speaker – The Speaker of the second chamber should be elected, however, they would not take on the same powers of the Speaker in the House of Commons. The aim of any Speaker in the House of Lords would be to maintain and develop a culture of consideration and reflection rather than the more confrontational element of the House of Commons. Therefore, the powers of the enhanced role must be designed to achieve that outcome. The DUP is conscious of increasing concerns about decisions and precedents being established by the present Speaker in the House of Commons and would wish to ensure that such issues would not arise from any enhanced role for the Speaker in the House of Lords.

Additional Powers

- A programme of reform for the House of Lords will obviously raise the issue of giving it greater powers, especially since it will have more democratic legitimacy. In general, no additional powers are considered necessary but that the legitimacy will see greater exercise of its existing powers.
- One exception could be empowering the House of Lords on post-Brexit trade deals. Home nations and regions have expressed concerns that national trade deals could fail to fully appreciate regional reliance on particular industries. Therefore, the House of Lords could be given the power to block or in keeping with its present powers delay such an agreement (though the present limited powers of delay would be insufficient).
Consultation Questions

Short-term reforms

1. Do you agree with the proposed short-term reforms of the House of Lords?

2. What would you remove or add from the short-term proposals?

Substantive reforms

1. Do you agree with the principles of the substantive reform proposals of the House of Lords?

2. What would you add to or remove from these principles?

3. What are your views of the proposed size, make-up and the mechanisms for selection of the new House of Lords?

4. What are your views on the proposed changes to the operation of the House of Lords?

5. What are you views on the proposed additional powers of the House of Lords?

6. If you reject all of the options what would you propose as the way forward for House of Lords reform?

7. Are there any other comments?

Deadline for responses is Friday 11th October 2019.

Contact details can be found on Page 2 of this paper.