

The proposed system for an elected House of Lords lacks accountability and offers voters far less choice than had previously been envisaged

Ron Johnston explains the draft legislation for an elected Upper Chamber and suggests that parties will come to dominate, the inability to re-elect members leaves an accountability gap, and much less choice is now offered to voters than had been advocated previously by the Liberal Democrats.



In the draft legislation for an elected House of Lords published in 2010 the Deputy Prime Minister's proposals reflected his party's position on electoral systems. Members would be elected from relatively small constituencies – 6-7 members from each at every election (except for Northern Ireland and Wales) – using the Single Transferrable Vote (STV). As well as ensuring quasi-proportional representation, this system would allow voters not only to express their preference for the various candidates fielded by their preferred party but also – if they wished – to give high preferences to candidates from more than one party as well as for those standing as independents. Voter choice would be maximised in the selection of individuals to conduct the legislative and executive functions that the second chamber would continue to undertake.

This system has been abandoned in the proposals contained in the *House of Lords Reform Bill 2012*, published on 27 June. Three tranches of 120 members are to be elected at each quinquennial election (held on the same day as elections to the House of Commons); they will serve for fifteen years and then be ineligible for re-election. In the draft proposals there were to be only 80 in each tranche, making a smaller House of 300 rather than the revised number of 450 – 360 elected and 90 appointed.

The proposed elections are to be conducted in twelve, on average, much larger constituencies than those originally proposed – the nine English regions plus one each for Northern Ireland, Scotland and Wales (those twelve are also the constituencies for elections to the European Parliament) – with the allocation of seats as follows:

East Midlands	9	South West	11
Eastern	11	West Midlands	11
London	14	Yorkshire and the Humber	10
North East	5	Northern Ireland	3
North West	14	Scotland	10
South East	16	Wales	6

The decision to move to larger constituencies was defended by Lord Strathclyde in the House of Lords on 27 June – 'to provide a clear differentiation between the role of MPs and that of elected members of the reformed House'. He concluded – rightly – that there would be 'significant practical issues' if STV was deployed for such larger constituencies; the choice of electoral system was determined by a decision on constituency size (itself a function of MPs' concerns that members of the Upper House would compete with them to serve local interests).

Within each region the electoral system to be used is – with one, not insignificant, exception – the same as that deployed for elections to the European Parliament. Thus in Northern Ireland STV is to be used; elsewhere a party list system. The difference concerns the details of the list system. A closed list system

is used for elections to the European Parliament. The voter decides which party to support and has no influence on which of its candidates will be elected: if a party is entitled to three seats in a region, then the three highest-ranked candidates on its list are elected – the voters cannot influence that ordering.

The proposed system for elections to the House of Lords deploys open rather than closed lists. Each party ranks its candidates in order of preference for being elected; thus, if it wins two seats the first two candidates on that list will normally be successful. But if the electors who support that party do not approve of its ordering of candidates, they can indicate which one (but only one) of the candidates on its list they prefer. Thus, for example, if party X is entitled to one seat, this will go to the highest-ranking candidate on its list, unless a substantial number of the party's supporters indicate that they prefer a candidate placed lower on the list.

This electoral system – which guarantees outcomes close to proportional representation – is superior to the closed list procedure deployed for elections to the European Parliament (save in Northern Ireland). But it is inferior to that proposed in the draft legislation because it offers electors minimal choice over which candidates should represent them: they have to select one party only (or one person standing as an independent), and can only indicate their preference for one among their selected party's candidates.

The proposed system has a number of other defects.

- Like the system used for election to the European Parliament, it uses the d'Hondt method to allocate seats across the parties in each region after the votes have been counted. D'Hondt, unlike the Sainte Laguë method widely used elsewhere for both closed and open list elections, favours the larger over the smaller parties.
- Because the proposed constituencies are very unequal in size – in England the smallest will return less than one-third of the members as the largest – the threshold for winning a seat will vary considerably across the country, again to the disadvantage of the smaller parties and independents in the smaller regions. In the North East region (with 5 seats), to win a single seat a party will need to get at least $1/6^{\text{th}}$ (i.e. 17 per cent) of the votes, whereas in the South East (with 16) it will need only $1/17^{\text{th}}$ (6 per cent).
- Although electors can indicate which of their party's candidates they prefer, the threshold that has to be crossed in order for such preferences to be deployed is substantial, set out in the Bill as 5 per cent of the total number of votes that the party obtains. That is a substantial number for most candidates unless either (a) they are very well-known publicly there or/and (b) they campaign very hard in the region – or parts of it – for those personal votes.

The Liberal Democrats' general position on elections to collective bodies such as national legislatures is that they should maximise voters' choices: members of the electorate should be able to indicate not only their relative preference for candidates fielded by one (perhaps their preferred) party but also their preferences for candidates across the various parties, as well as independents. The STV system which the Liberal Democrats have promoted for many decades is best able to achieve this among the systems generally considered, and it was in the coalition government's initial proposals for a partly-elected House of Lords (under the name of the Deputy Prime Minister, Nick Clegg).

That system has been dropped from the draft legislation, in order to have larger constituencies in which elected members of the House of Lords would not be tempted to compete with MPs as representatives of local interests – or even the concerns of individual electors. Instead, they have proposed an electoral system that offers the electorate two choices only – between the various parties (with each independent candidate being the equivalent of a party), and among the candidates of their chosen party (and there they can indicate their first choice only).

The result of this switch – if the proposals are implemented – will be elections dominated by the parties. It is very likely that no party will have a majority among the elected members of the new House (the 20 per cent of appointed members will be non-partisan, although some may vote more often with one party than another). One or more parties may then hold the balance of power there. This may not be too significant as the House's roles are not to change – it will concentrate on legislative and executive

scrutiny, with legislative power remaining with the House of Commons. But the nature, length and outcome of that scrutiny could change – with the new Upper House being less willing to concede to the ‘other House’ unless there is clear agreement (legislation?) regarding the resolution of inter-House differences.

Much democratic theory holds that members of elected legislatures should have both legitimacy and accountability. Legitimacy is provided by success at an election; accountability by the voters’ ability to evaluate the legislator’s performance at the next election. The latter is absent from the proposals since members elected for fifteen years will be ineligible for re-election: voters can evaluate a party’s performance but not an individual member’s. Parties will dominate in the new House – and because of the chosen electoral system voters will be largely denied the opportunity to determine **who** represents them there, even within individual parties.

The Liberal Democrat party has long advocated an electoral system that offers much more choice than the one that, after negotiations with their coalition partners, they now offer. Only in the country’s smallest region – Northern Ireland – will their preferred system be deployed. For the majority of UK citizens who scrutinise legislation and holds the executive to account in the revised Upper Chamber will be determined by their choice among the political parties only.

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