

The Wright reforms changed Parliament, but there remains scope for further reform

By Democratic Audit

*The Reform of the House of Commons Committee (also known as the Wright Committee) suggested a number of changes which have, since their implementation, had a tangible effect on the relationship between Parliament and the executive. Despite this, there is still scope for further reform on select committees, Scotland, the right of recall, and the House of Lords, says **Nat Le Roux** of the Constitution Society.*

The Wright reforms: three years on

The long period of Labour government before 2010 was marked by a growing concern that the relationship between Parliament and the Executive had become seriously unbalanced. Governments with large majorities seemed able, and willing, to treat the Commons as more or less a rubber-stamp. In 2009 the House of Commons Reform Committee, chaired by Dr Tony Wright, recommended a series of procedural changes aimed at restoring the Commons' authority over its own affairs and improving backbench MP's ability to scrutinise legislation effectively.

In 2010 the incoming coalition government implemented some, but not all, of the recommendations of the Wright report. The two most important reforms were:

- Election of members and chairs of Select Committees by secret ballot
- The establishment of a Backbench Business Committee

Three years on, the relationship between Government and Parliament feels very different. Procedural changes have played a part in this, although it is mainly the dynamics of coalition politics and the large influx of independent-minded new members in 2010 which are responsible for the apparent erosion of Executive hegemony.

Select Committees

With the introduction of election by secret ballot in 2010, the party whips can no longer influence the appointment of Select Committee members or, importantly, their chairs. There is no doubt that the authority and legitimacy of Select Committees have grown in consequence, to the point where some ambitious MPs now see the chair of one of the more influential Committees as an attractive career goal, as an alternative to ministerial office.

The re-invigoration of Select Committees is generally welcome. However their powers need to be clarified and the conduct of oral evidence sessions improved. Select Committees currently have no legal powers to compel witnesses to attend or answer questions. The current practice of dividing the questioning of witnesses between members makes it difficult to follow any line of enquiry to its conclusion. Select Committees should be able to employ professional counsel to examine witnesses when the circumstances warrant it.

At the same time, there have been some unfortunate incidents in which grandstanding members have hectorred witnesses in a way which would not be acceptable in a court.

Select Committee members who make damaging allegations against individuals are protected by parliamentary privilege. However a witness who, for example, is induced to make disclosures in breach of a confidentiality agreement enjoys no such protection. It must be likely that sooner or later an offended witness will seek legal redress. It is very desirable that these issues are addressed by statute, before the courts are dragged into Parliamentary proceedings in a way which would further damage relations between politicians and the senior judiciary.

Backbench and House Business Committees

The establishment of an elected Backbench Business Committee in 2010 removed the scheduling of backbench (i.e. non-government) business from government control. There is a general consensus that this has had a very positive effect on MP's morale and that the Committee is functioning effectively under the chairmanship of Natascha Engel MP.

The Wright report also recommended the establishment of a House Business Committee, made up of the elected members of the Backbench Business Committee together with frontbench representatives nominated by the party leaders, which would assume responsibility for the House's weekly agenda. The Coalition agreement committed the government to introduce a House Business Committee by the third year of the current Parliament. In May 2013 Andrew Lansley, the Leader of the House, told the Commons Political and Constitutional Reform Committee (PCRC) that this pledge would not be met, although the government remains committed in principle to the introduction of a House Business Committee. His reason was that it was not practical to introduce such a Committee 'while [we are] still trying to understand what the impact of the Backbench Business Committee is'.

The introduction of a House Business Committee would be a further significant step in the restoration of Parliament's authority over its own agenda. PCRC has recommended that a consultative House Business Committee should be introduced as an interim step.

Right of recall

In July 2013 the Government reaffirmed its intention to introduce a 'right of recall' for MPs guilty of serious wrongdoing. Under the Government proposals, a recall petition would be automatically opened in the constituency of any MP who received a custodial sentence of 12 months or less (MPs who receive longer sentences are already automatically disqualified) or when the House resolved that a member should face recall because of 'serious wrongdoing'. If 10% of constituents sign the petition then a by-election would be called.

The PCRC's view is that the Government proposals would not help to increase public confidence in politics because the grounds for recall 'are so narrow that recall petitions would seldom, if ever, take place'. This is a legitimate criticism, but there are serious objections to allowing constituents a broader right to petition for recall in the absence of objectively-determined serious wrongdoing. Such a right would allow a vociferous minority to trigger a by-election for what might simply be political advantage; the threat of a recall petition could equally be used to intimidate MPs who did not follow the party line.

The aborted reforms of 2011-12

The Coalition Agreement committed the present government to four major pieces of constitutional and electoral reform: a referendum on the AV voting system, the equalisation of constituency sizes, an elected House of Lords and five-year fixed-term Parliaments. Only the last of these policies has resulted in actual change: the electorate voted 'no' to AV, Conservative backbench rebels scotched Lords reform and the LibDems vetoed the boundary changes in retaliation.

Will these aborted reforms be revived after the 2015 election? The Conservatives will certainly implement the constituency boundary changes if they can. A further attempt to change the voting system seems unlikely. The LibDems will have significantly fewer seats after 2015 – perhaps as few as 30 – and their bargaining power in coalition negotiations will be reduced accordingly. It is regrettable that electoral reform is now quite widely viewed as a self-interested LibDem hobby-horse and it seems likely that a second referendum, whether on AV or PR, would also deliver a 'no'. There is nothing in principle to prevent the government changing the voting system without a referendum but, after the precedent of 2011, that would risk popular opprobrium.

Every attempt at wholesale reform of the Lords since 1911 has failed. Another attempt to introduce election for peers would be likely to meet the same fate. Significant numbers of MPs from both the main parties believe that an elected upper House would undermine the Commons' monopoly of democratic legitimacy and, as in 2012, they will defy the Whips to block it.

The Hansard Society's annual Audit of Political Engagement indicates that less than 10% of the public believes that constitutional reforms of this type are likely to significantly improve our political system. It is questionable whether in a 2015 coalition negotiation the LibDems would expend political capital on reforms which have limited resonance with the electorate and only a small chance of implementation.

Reforming the existing Lords

If the Lords is likely to remain a largely appointed body for many more years, there are very strong arguments for addressing the system of appointment and the excessive number of peers; the most egregious features of the current House.

The policy of the present government, stated in the Coalition Agreement, is that 'Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election'. 117 new peers were added in the year after the May 2010 General Election, an unprecedented influx which put, and continues to put, a significant strain on the House's resources, especially Members' office accommodation.

In 2011, Meg Russell of the UCL Constitution Unit demonstrated in an influential paper that full 'proportionality', including seats for the minor parties, would require a minimum of 269 additional peers to be appointed in the current parliament, taking the size of the chamber to over 1050. Dr Russell concluded that 'This would have disastrous consequences for the operation of the chamber, and be deeply unpopular with the public.'

Over the past two years there has been an effective unofficial moratorium on new appointments. Despite this, the House currently has 766 'eligible' members (and well over 800 if the further 50-odd who are either on leave of absence or disqualified are included), compared to 666 immediately following the exclusion of most of the hereditary peers in 1999. It is the only second chamber in the democratic world which is larger than its respective first chamber.

The issue of capping the size of the House at a workable number, perhaps 650 at a maximum, is intimately connected with the method of appointment of new members. Under current arrangements, the Prime Minister appoints most new peers, including those who represent other political parties. Successive Prime Ministers have, unsurprisingly, tended to appoint a disproportionate number from their own parties: their successors' equally unsurprising desire to restore the balance acts as ratchet which progressively increases the size of the House over time.

Various proposals have been advanced for reducing the size of the Lords and placing the process of appointment on a more satisfactory basis. A possible package of measures capable of commanding cross-party support would include:

- Agreement amongst the party leaders on a proportionality formula for future political appointments. This would apply to new appointments only, not the composition of the House as a whole, to avoid the inflationary effect of existing government policy.
- Agreement amongst the party leaders on the ratio between political appointments and Crossbench appointments. There appears to be a near- consensus that this should be 80/20.
- Responsibility for all appointments to be delegated to the Appointments Commission (which is already responsible for selecting Crossbench members) with the party leaders submitting recommendations for political appointments.
- Compulsory retirement of members at a fixed age, either 75 or 80.
- Ending the current system under which the 92 hereditary peers are replaced when they die.

The West Lothian Question and the Scottish referendum

The referendum on Scottish independence is a year away, with current polling suggesting a substantial majority will vote 'no'. All the Westminster parties are developing proposals for a further round of devolution, beyond the provisions of the 2012 Scotland Act, assuming the Scottish electorate votes as predicted. These can be expected

to include a substantial further transfer of tax-raising powers.

A further round of devolution will unavoidably trigger another airing of the West Lothian question, the oldest chestnut in the devolution debate. Earlier this year the McKay Commission recommended that future legislation affecting England (or England-and-Wales) specifically should require the support of a majority of MPs sitting for English (or English-and-Welsh) constituencies.

Growing numbers of English voters resent the advantages which Scotland is believed to enjoy in public spending and Parliamentary representation. If Westminster's relationship with Holyrood comes increasingly to resemble that between a federal and state parliament in a decentralised federal system, many will feel that McKay does not go nearly far enough and a more hard-edged version of 'English votes for English laws' is called for. Beyond that, there may be a point on the devolution trail when a significant reduction in the number of Scottish MPs becomes a real possibility, with unpleasant electoral consequences for Labour.

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