

The Conservatives will not ‘suspend’ the House of Lords, but neither will they reform it

blogs.lse.ac.uk/politicsandpolicy/the-conservatives-will-not-suspend-the-house-of-lords-but-neither-will-they-reform-it/

10/21/2015

*The government's plans to cut tax credits might just be threatened with a 'fatal motion' in the House of Lords next week. Unnamed ministers have threatened peers in turn with suspension. **Richard Reid** explains how the Lords can get involved in statutory instruments. He argues that this is another case where peers must walk a fine line between being neither a government 'lap-dog' nor a serious obstruction of an elected government. Whatever happens, it seems highly unlikely that the Conservatives will initiate any kind of constitutional change.*



There has been [speculation](#) about the potential role of the House of Lords in blocking Osborne's plans to cut tax credits. The plans in question – Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015 – are in the form of a statutory instrument, the most common type of '[delegated legislation](#)', which is usually made by ministers to care for technicalities not included in Acts.

The plans currently under debate are in the form of an [affirmative instrument](#), which requires the approval of both Houses. The Commons gave their approval to the instrument on 15 September 2015 with the ayes 325 and the noes 290, although in the midst of [opposition](#) from Conservative backbenchers.

What makes delegated legislation so important in the relationship between the House of Lords and the House of Commons is that the Lords can still exercise a complete right of veto over such instruments. This [means](#) that if the Lords votes to reject Osborne's plans, the Commons cannot overturn this decision. The further complication is that the House of Lords does not have the power (except in small instances of cases) to amend delegated legislation – the choice is to either accept or reject.

It's worth noting that between 1968 and 2012, there were [four instances](#) of the Lords rejecting affirmative instruments. A fifth, possibly the one hinted at in the [Guardian](#), was a motion against a negative instrument – the Greater London Authority Elections Rules 2000 – which was eventually agreed to by the Lords on 22 February 2000.

Of interest to current debate is work by Meg Russell. Russell conducted a [survey of peers](#) in 2007 and 'found only 23% of members agreeing that "the House of Lords should not block delegated legislation"'. Russell went on to [argue](#) that 'one peer described the convention [of not rejecting delegated legislation] as "hanging by a thread"'. So it is perhaps not surprising that there are some peers, such as Baroness Meacher, who are willing to threaten [action](#) in the form of a 'fatal motion'. Also unsurprising is the [apparent reluctance](#) of some senior members of the House of Lords to such serious obstruction of government business.

Yet these developments must all be kept in the context of the near-death experience which the House of Lords faced under the Coalition government. Whilst Nick Clegg's plans for wholesale Lords reform came to nought in 2012, it is a clear concern of many peers to ensure that the House of Lords does not come so close to largescale reform again. Since the failure of Clegg's proposals, the Lords has implemented a series of minor reforms to its membership and practices, such as allowing peers to retire in an effort to keep overall membership figures down, and to improve its reputation. Importantly, research shows that the vast majority of peers [see great merit](#) in the House of Lords, and its role in British governance, and this position is not based primarily on self-interest.

Despite the reports over a 'fatal motion', what has been unreported in the press are the views of peers. Would there be a majority of peers who would oppose this legislation? Reports have suggested that Labour and the Liberal

Democrats would support the rejection of the instrument, but either Conservative or Crossbench support would be needed to ensure its success. Additionally, in the House of Lords there is always the issue of getting peers to turnout for votes – so the figures are not always as clear-cut as they might seem.

Regardless of whether a ‘fatal’ motion is introduced, Monday 26 October will be an important day for those interested in the role of the contemporary House of Lords. Will a peer be willing to directly oppose the instrument? If so, will there be support for such a motion from across the House? It seems that either way, the government would be unlikely to use this alone as grounds for reform. More importantly, can the Conservatives under Cameron really contemplate the possibility of bringing Lords reform back onto the agenda? This seems incredibly unlikely in light of the deep wounds the last attempt at reform wrought to Cameron’s Conservatives.

Note: This article gives the views of the author, and not the position of the British Politics and Policy blog, nor of the London School of Economics. Please read our [comments policy](#) before posting.

About the Author

Richard Reid is Research Assistant and PhD candidate at the Institute for Governance and Policy Analysis, University of Canberra



(Featured image credit: [UK Parliament](#) CC BY-NC 2.0)