



Chapter 10 – Characteristics of the reformed second chamber

10.1 We have considered and made recommendations on the role and functions of the second chamber. Under our terms of reference our task now is “to make recommendations on the method or methods of composition required to constitute a second chamber fit for that role and those functions”.

10.2 We decided that there was a necessary interim step. We considered what characteristics the second chamber’s members, individually and collectively, should possess before deciding how those might best be secured.

Characteristics

10.3 Our consultation paper asked what characteristics the members of the second chamber should possess and what steps might be taken to secure them. We have been influenced by the suggestions we received and by the conclusions we reached about the second chamber’s overall roles and functions. Our overriding concern has been to develop a vision of a reformed second chamber which has the necessary authority to do an effective job and is consistent with the principles underlying Parliamentary democracy. We conclude that the reformed second chamber should be:

- authoritative;
- confident; and
- broadly representative.

It should incorporate:

- breadth of expertise and a broad range of experience;
- particular knowledge and skills relevant to constitutional matters and human rights;
- an ability to bring philosophical, moral or spiritual perspectives to bear;
- personal distinction;
- freedom from party domination;
- a non-polemical style; and
- the ability to take a long-term view.

Authoritative

10.4 The reformed second chamber should be authoritative. It can and should play a vital role in scrutinising the executive, holding the Government to account and shaping legislation. It should therefore have the authority to ensure that its views and concerns are taken seriously. We have proposed that it should retain the power to hold up the enactment of primary legislation and have power to delay the implementation of secondary legislation. It should have the authority to wield those powers.

10.5 It is essential that the second chamber's authority should not be such as to challenge the ultimate authority of the House of Commons which derives directly from the electorate, through popular elections. It does not follow that there can be no role for the electorate in choosing members of the second chamber and we discuss possible options further in Chapters 11 and 12. But the greater the 'democratic legitimacy' of the second chamber, the greater the risk of damaging constitutional conflicts arising between the two Houses of Parliament.

10.6 It is, however, an error to suppose that the second chamber's authority can only stem from democratic election. Other potential sources of authority include:

- the extent to which the second chamber's members are broadly representative of the changing society which it seeks to serve;
- the breadth of experience and range of expertise which they possess;
- their individual personal distinction;
- the quality of the arguments they can bring to bear; and
- their ability to exercise an unfettered judgement, relatively free from partisan political control.

10.7 In our view, the members of the reformed second chamber, both collectively and individually, should possess all these characteristics in any case. But their presence will, in addition, contribute substantially to its overall authority and to its ability to make itself heard. A second chamber drawing on such a wide range of sources of authority would be well placed to carry out effectively the roles and functions we have recommended.

Recommendation 60: The reformed second chamber should be authoritative. That authority could be derived from a number of sources, but should not be such as to challenge the ultimate democratic authority of the House of Commons.

Confident

10.8 The reformed second chamber should also be sufficiently confident to use its powers in what it judges to be the most effective and appropriate manner. Throughout the 20th century the House of Lords was inhibited both by its lack of authority and its lack of confidence. The reformed second chamber must be free of such debilitating inhibitions.

10.9 The second chamber should be cohesive. In determining how it should be composed and in considering its working practices, it will be important to ensure that members should be able to work well together, without being troubled by any sense or suggestion that some have a higher authority than others. Without such cohesion it would be difficult to generate the necessary confidence on the part of the second chamber as a whole.

Recommendation 61: The reformed second chamber should be sufficiently confident and cohesive to use its powers effectively and appropriately.

Broadly representative

10.10 The reformed second chamber should be broadly representative of British society as a whole. The House of Commons is obviously representative in that MPs represent their individual geographic constituencies and reflect the electorate's basic political choices. Nevertheless, there is a gap to be filled. It is not possible for voters to reflect all aspects of their personality and experience through a single vote in a general election. The second chamber could gain significant strength and authority from being seen to be representative of British society in all its dimensions. However, it cannot and should not be a mere statistical microcosm of British society. The long-term aim should be for all sectors of society to feel they have a voice in the second chamber, expressed by a person or persons with whom they can identify. This might be achieved through a combination of:

- regional representation;
- gender balance;
- representation for ethnic and other minorities;
- vocational representation; and
- appropriate representation for voluntary, cultural, sporting and other organisations.

10.11 We discuss how such a breadth of representation might be achieved in later chapters of this report. The key point to register here is that a more broadly representative membership could provide a vigorous alternative source of authority for the second chamber without threatening the democratic authority of the House of Commons. It could also play an important role in reconnecting ordinary people with the political process.

10.12 For the reasons set out in Chapter 6, the reformed second chamber should provide a voice for the nations and regions of the United Kingdom. The people of all parts of the United Kingdom should know that their interests are being spoken for in the second chamber by people with whom they can identify. The level of direct regional representation should be sufficient to enable the second chamber to contribute effectively to the discussion of devolution and regional matters. It might well be raised if developments in the process of devolution or decentralisation make that appropriate.

10.13 The House of Lords has for far too long contained an excessive proportion of white males. Even the present life peerage, although it includes a higher proportion of women and members of minority ethnic groups than the former House of Lords, is far from being representative of British society in either respect. The reformed second

chamber should be different. There should be steady progress towards gender balance and a more substantial representation of minority ethnic groups.

Recommendation 62: The reformed second chamber should be broadly representative of British society as a whole.

Breadth of experience and range of expertise

10.14 One of the characteristics of the present House of Lords which was widely applauded during our consultation exercise was that it contains a substantial proportion of people who are not professional politicians, who have experience in a number of different walks of life and who can bring a considerable range of expertise to bear on issues of public concern. The support for this was reflected in the substantial number of proposals we received that members of the reformed second chamber should be drawn in some way from professional bodies, vocational groups and other organisations representative of specific sectors of society.

10.15 We discuss this concept and its practicalities further in Chapter 11, but it seems to us desirable that the reformed second chamber should continue to have members with a wide variety of experience in different walks of life. This would contribute to the goal of extending the range of perspectives from which issues are viewed by Parliament. It would be consistent with our desire to see a second chamber which was broadly representative of British society as a whole. It would reinforce the authority of the second chamber. Above all, the ability to call on at least some people with practical experience or relevant expertise in particular areas would reinforce the scrutinising role of the second chamber by helping it to assess the workability of proposals.

10.16 Having members with a range of relevant experience in the second chamber should not be seen as a substitute for consulting interested parties or taking evidence from relevant experts. Nevertheless, we see advantage in having people present in the second chamber who are familiar with the broad issues in a given area, who know what questions to ask and how to interpret the answers. People who have acquired relevant experience and expertise outside Parliament should be in a position to contribute actively to debates. Expert advisers, brought in from outside, however persuasive, could not have the same impact.

10.17 The present House of Lords has benefited from many of its members continuing their careers outside Parliament or maintaining contact with their former professions or occupations. Arrangements for constituting the reformed second chamber should allow this tradition to be maintained, so that at least some members can spend a proportion of their time actively engaged in work outside Parliament. Part-time membership of the second chamber should continue to be facilitated and even encouraged. There should be no minimum attendance requirement.



10.18 The range of expertise expected of members of the second chamber need not be prescribed in detail or remain constant over time. It should cover a broad spread of fields. Some particular types of expertise, likely to be of continuing relevance to the work of the second chamber, should always be represented in sufficient strength. The second chamber should contain people with a good grasp of the political and constitutional context within which the chamber will operate. It should contain people with an expert understanding of legal concepts and terminology and with practical experience of making and operating the law or developing public policies in a range of areas. There should be people with broad experience in public affairs and good analytical, influencing and debating skills. It should also contain people with broad experience of international, including European, affairs.

Recommendation 63: The reformed second chamber should contain a substantial proportion of people who are not professional politicians, who have continuing experience in a range of different walks of life and who can bring a broad range of expertise to bear on issues of public concern. Accordingly, part-time membership of the second chamber should continue to be facilitated and even encouraged. There should be no minimum attendance requirement.

Particular knowledge and skills relevant to constitutional matters and human rights

10.19 In view of what we say in Chapter 5 about the second chamber's roles in relation to constitutional matters and human rights, its membership obviously needs to include people with knowledge and expertise in these areas.

10.20 In other countries, the consideration of constitutional matters and human rights issues is carried out by people of acknowledged independence with extensive legal and judicial experience. In this country, a strong contingent of experienced lawyers should be present in the reformed second chamber to help with this work. As currently, serving Law Lords would need to avoid committing themselves on particular issues which they might subsequently have to rule on. But retired Lords of Appeal in Ordinary or former holders of high judicial office would be free to contribute more fully. However, the consideration of constitutional and human rights matters is not a task which need, or should, be left exclusively to people with judicial experience or to lawyers. People with experience or expert knowledge of human rights issues and international human rights instruments would be required. Many of those members with the kind of qualities mentioned in paragraph 10.18, or others with a stock of accumulated wisdom, would be well placed to contribute to this work.

Recommendation 64: The reformed second chamber should include members with the knowledge and skills necessary to enable it to discharge effectively its roles in relation to constitutional matters and human rights issues.

Philosophical, moral or spiritual perspectives

10.21 The House of Lords, uniquely among second chambers, provides seats in the legislature for representatives of an established religious body: the Church of England. We discuss the implications of this arrangement and whether it should continue in Chapter 15. But whatever the arguments for and against the representation of the Church of England, it is widely acknowledged that philosophical, moral or spiritual considerations should consistently be brought to bear on the discussion of public policy issues. The present House of Lords has benefited from having distinguished philosophers and leading members of other Christian denominations and other faiths – as well as Church of England bishops – among its members. There is a case for continuing to recognise the value and relevance of philosophical, moral and spiritual considerations in the constitution of a reformed second chamber. This could be accommodated in a range of ways, involving secular philosophers as well as religious leaders.

Recommendation 65: The reformed second chamber should continue to include people who can help it to maintain a philosophical, moral or spiritual perspective on public policy issues.

Personal distinction

10.22 The second chamber should contain people of considerable personal distinction with established reputations in a variety of walks of life. Views and concerns expressed by such people are likely to be taken seriously. They can be expected to follow their conscience if it conflicts with the advice of their party whip and so will reinforce the second chamber's disposition to make independent judgements based on the merits of the issues concerned. Also, people who have already achieved a certain eminence may be better able to devote time to contributing to the work of the second chamber.

10.23 We see no tension between the desire to secure members of considerable personal distinction and the more general aim of constructing a truly representative second chamber. There should be opportunities for people from every sector of society to become members of the second chamber, whether or not they have achieved a recognised eminence. One important consideration will be the future of the current link between the award of a peerage and membership of the second chamber, which we discuss further in Chapter 18. Our view is that the link should be broken and that membership should be based on an evaluation of the contribution a person could make rather than being a reward for past services.

Recommendation 66: The reformed second chamber should contain people of considerable personal distinction who have established reputations in various walks of life and can make a positive contribution to its work.

Freedom from party domination

10.24 As we observed in Chapter 3, it would be unrealistic to think that the second chamber could somehow be insulated from party politics or that it could function effectively without the involvement of political parties. As long as the second chamber retains a role in the determination of public policy and legislation, the political parties will demand access to it and find ways of securing a role for themselves.

10.25 It is nevertheless crucial that no one political party should be able to dominate the second chamber. If it were to be controlled by the party of Government it might become nothing more than a rubber stamp. If the main Opposition party were to gain control, it could be used to produce legislative deadlock and so trigger a series of constitutional conflicts. There should be a fair balance between the main political parties in the second chamber and no one party should ever be able to secure a majority. We accept, however, that the party of Government should have significant representation in the chamber so that it has a substantial pool of supporters to call on. The Government needs people who can serve as Ministers, explain and defend Government policies and provide some assurance that Government business will get through without undue delay or disruption.

10.26 We see advantages in preserving a strong independent element such as that represented in the present House of Lords by the Cross Benchers – members who are not affiliated to any political party. The existence of such an independent element would of course be consistent with our desire to see a second chamber which was more broadly representative of British society. People in all walks of life have political views, but the net should be cast sufficiently wide to ensure that a proportion of those selected to be members of the second chamber are not formally affiliated to any particular party and will sit on the Cross Benches. If the proportion of Cross Benchers were large enough, it would provide an absolute guarantee that no one political party could ever come to control the second chamber. The fact that the Cross Benchers might hold the ‘balance of power’ would encourage the parties’ spokespersons to seek to win any arguments on their merits rather than by appealing to party loyalty or partisan interests. The authority of the second chamber would be reinforced if decisions were taken at least to some extent on the basis of an independent judgement of the merits of each case.

10.27 It would be wrong, however, to place the onus for ensuring independent-mindedness solely on Cross Benchers. During the consultation exercise our attention was repeatedly drawn – with approval – to examples of members of the House of Lords who were affiliated to a party but had not voted invariably in accordance with their party whip. We share the view that even those members of the second chamber who are affiliated to a party should be prepared to deal with issues on their merits and should exercise a certain independence of judgement.

10.28 More generally, members of the second chamber should not be beholden to or capable of being mandated by any other person or organisation. They should be ‘representatives’ in the Burkean tradition, not delegates. They should think and speak for themselves.

Recommendation 67: The reformed second chamber should not be capable of being dominated by any one political party and its members should be encouraged and enabled to deal with issues on their merits.

A non-polemical style

10.29 The second chamber would benefit from preserving the relatively non-polemical style of the present House of Lords. This feature of the present House of Lords was widely supported by respondents to our consultation exercise. A non-polemical style would be a natural corollary of ensuring that no one political party could control the second chamber and that it contained a significant proportion of independents. Such a style would be consistent with the second chamber's general function of providing dispassionate, well-informed scrutiny of proposed legislation and of the actions of the executive.



Committee room in the House of Lords

10.30 Membership of the second chamber should not be seen as a stepping stone to membership of the House of Commons. If this were the case, it could lead to the development of a more partisan style within the chamber which could undermine attempts to deliver some of the other characteristics of the second chamber we have identified as being desirable.

Recommendation 68: The reformed second chamber should preserve the relatively non-polemical style of the present House of Lords.

Longer-term perspective

10.31 One of the strengths of the present House of Lords is that its members often have a relatively long-term perspective – perhaps because they serve for life and do not need to seek reelection or reappointment. So far as possible, this feature should be perpetuated in the reformed second chamber. A long-term view makes for better legislation. The interests of future generations are more likely to be taken into account in shaping legislation and scrutinising Government proposals.

10.32 We would hope to see the chamber accumulating wisdom and experience and maintaining a broadly consistent overall approach. A reasonable degree of continuity of membership from one period to another would help to facilitate this.

Conclusion: Members of the reformed second chamber should have a long-term perspective and the chamber should have a reasonable degree of continuity of membership from one period to another.