

Memorandum of Comments by the Constitutional Law and Human Rights Subcommittee

Comments to the House of Commons Public Administration and Constitutional Affairs Committee Inquiry into the membership of the House of Lords.

September 2023

Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Constitutional Law and Human Rights Subcommittee welcomes the opportunity to comment on the House of Commons Public Administration and Constitutional Affairs Committee Inquiry into the membership of the House of Lords: [Membership of the House of Lords - Committees - UK Parliament](#). The committee has the following comments to put forward for consideration.

General Comments

Appointments to the House of Lords

1. Are the current arrangements for appointments to the House of Lords sufficiently robust to produce an effective and trusted Chamber?

We note with approval the comments made by Lord McFall, the Lord Speaker who, when making a speech to the Hansard Society in December 2022 said:

“My first truth is that the House adds significant value to parliamentary scrutiny and revision and is distinct from and complementary to the House of Commons.

And my second truth is that, while the House of Lords is able to add value because its composition is different from the Commons, there are also issues around our composition which we need to resolve.”: [Speech by the Lord Speaker on the future of the House of Lords | Lords Reform \(hansardsociety.org.uk\)](#)

Size of the House.

The Lord Speaker's Committee on the Size of the House was established in 2016. In its first report, it proposed how the House of Lords could be reduced in size using its powers of self-regulation rather than legislation, pending any more fundamental reform. The key proposals were:

- (a) Cap on the size of the House of 600 members.
- (b) Reduction to 600 members over a decade, under a 'two-out, one-in' formula.
- (c) Fixed terms of 15 years for new members to generate sufficient turnover.
- (d) A fair allocation of appointments reflecting the most recent general election results.

The fifth report of the Lord Speaker's Committee on the size of the House [Fifth Report \(parliament.uk\)](#) [examines these issues in further](#) detail.

Our Comment

There are at the time of writing 822 members of the House -- the number of peers focusses attention on the membership issue. The fifth report highlights that "If Labour do enter government, there will be considerable pressure to increase their membership in the House of Lords in order to fill all the necessary frontbench roles and to progress their legislative programme as set out in their manifesto." (Paragraph 32).

The Lord Speaker has indicated that "A House with approaching 1,000 members would not function as a collective entity. Self-regulation would fail. The capacity for civil discourse and effective scrutiny would be fundamentally weakened."

The [House of Lords Appointments Commission \(independent.gov.uk\)](#) (HOLAC), operating from within the Cabinet Office, has a narrow remit to consider only the propriety of appointments, rather than expertise, suitability or the time commitment a new member might make to the House.

The Lord Speaker commented that "Its Chair, Lord Bew, recently made a rare public intervention about this arguing that the inappropriate nature of recent proposals was putting the Commission in an "uncomfortable" position."

Membership of the legislature is a serious responsibility and brings with it a duty of public service. The recent Prime Ministerial resignation lists have thrown into sharp relief the issues which can arise where appointment to the House may be perceived as a reward rather than an opportunity to serve.

Many commentators confirm that there is a case for examination of the appointments process, including a more robust vetting system and stronger powers for HOLAC. The work of the House of Lords as a revising chamber for legislation, as a forum for inquiries into matters of national importance and as a national reserve of expertise requires members who are able and willing to make a contribution to its work.

A review of the appointments system, reducing the size of the House and increasing the diversity of its members are, as the Lord Speaker has identified, all parts of improving the role of the House.

2. What reforms, if any, should be made to the current appointments process?

Our Comment

HOLAC was established in 2000. It is independent and separate from the House of Lords.

HOLAC recommends individuals for appointment as non-party-political life peers. It vets nominations for all life peers, including those recommended by the political parties, to ensure the highest standards of propriety. Members can be suggested by the public and political parties. Once approved by the prime minister, appointments are formalised by the King.

The Commission members follow the **Seven Principles of Public Life** set out by the Committee on Standards in Public Life and comply with the Commission's Code of Practice which obliges them to observe the highest standards of impartiality, integrity and objectivity in their consideration of those nominated for life peerages and in their recommendations for non-party political peerages.

The appointment of non-party-political life peers attracts little criticism other than the time which HOLAC takes to complete its process.

HOLAC also deals with nominations made to the political benches, including those nominated to serve as ministers. Criticisms have been recently made in relation to such party-political appointments. If there is a reform which needs to be considered it relates to the appointment of such peers. Many of the criteria which apply to non-party-political appointments may equally be valid to the party-political appointments.

HOLAC's report for 2018/2022 [HOLAC Report 2018-2022 FINAL.docx \(independent.gov.uk\)](#) describes its policy updates on political donations, the application of the Nolan Principles of Public Life and the appointment of non-aligned peers.

One key point which HOLAC makes is that the Prime Minister decides the number and timing of recommendations from the Commission. "In 2012, the then Prime Minister, David Cameron, asked the Commission to make a maximum of two recommendations a year for the time being.

The report notes that from "1 November 2018 until 31 December 2022, the Commission received 474 nominations from individuals wishing to be considered for non-party-political membership of the House of Lords. Furthermore, during the reporting period, the Commission interviewed 19 nominees, and recommended four individuals: Dame Susan Black, Sir Amyas Morse, Shaista Gohir and Professor Katherine Willis. In other words, two nominations in each of 2021 and 2022. No nominations were made in 2019 or 2020 as the Commission was not offered the opportunity to make appointments in those years."

The House is as the Lord Speaker said, "replete with experience and expertise", if the maintenance of that that experience and expertise is to continue HOLAC will need to be free to make more nominations in the future and the political appointments will need to rebalance to allow for that. Only with such rebalancing will the advisory role of the House be maintained.

It is clear that the appointment of non-political peers is not a priority whereas political appointees are. This may be understandable but is not designed to resolve the problems which the Lord Speaker articulated.

The Lord Speaker also expressed the view that reform proposals needed "to achieve engagement and endorsement from Government, from political parties in Parliament and—not least—from across our increasingly diverse UK population".

That point about public confidence is crucial not only to the House of Lords but to any government or political party which has access to the appointments process.

Reforms which are necessary include:

- a. Placing HOLAC on a statutory footing to ensure its stability and enforcement powers (page 15) [:rebuilding-and-renewing-the-constitution.pdf \(instituteforgovernment.org.uk\)](#)

- b. Removing or restricting the power of the Prime Minister to direct HOLAC. For example, the Institute for Government has set out the need for “a commitment to always respect the recommendations of the independent House of Lords Appointments Commission on propriety, and (in the first instance) to give it more powers to manage down the size of the chamber to no larger than the House of Commons, ensure that new seats are shared fairly between the parties, and exercise tighter control over the number and quality of appointments.”(page 13): [rebuilding-and-renewing-the-constitution.pdf \(instituteforgovernment.org.uk\)](https://www.instituteforgovernment.org.uk/sites/default/files/2019-04/rebuilding-and-renewing-the-constitution.pdf),
- c. Enabling HOLAC to advertise, receive applications and make recommendations without political interference,
- d. Removing the power of the Prime Minister and the party leaders to make recommendations for membership although they can encourage applicants to apply to HOLAC and provide references for applicants,

3. How should the rules governing the appointments process be set out? Is guidance and convention sufficient or is a statutory basis for such appointments required?

Our Comment

We take the view that guidance and convention are insufficient to provide the required robustness. A statutory scheme is necessary to ensure that those who can contribute best to the work of the House are nominated, vetted and appointed.

House of Lords Appointments Committee (HOLAC)

4. Is HOLAC carrying out its role effectively?

Our Comment

Within the constraints of the current system, we believe that HOLAC is carrying out its role effectively.

5. Are changes needed to the role and powers of HOLAC? If so, what, how and why?

Our Comment

See our comments in response to question 2 above.

Size and membership

How effective is the House of Lords in its current size?

Our Comment

The House of Lords carries a considerable workload aimed at ensuring that it can fulfil its roles of “examining bills, questioning government action and investigating public policy.” [House of Lords - UK Parliament](https://www.parliament.uk/about/offices/holac/).

In the last year the House has considered a number of important bills including the Retained EU Law (Revocation and Reform) Bill, the Northern Ireland Troubles (Legacy and Reconciliation) Bill, the Online Safety Bill, the National Security Bill and the Illegal Immigration Bill. These bills were subjected to exacting scrutiny in Committee and at Report which resulted in the Government making a number of amendments dealing with serious concerns about each measure. Legislation is the way in which Government policies

are made into binding rules which affect us all. If legislation is to achieve this purpose, it must reflect those policies and express them clearly to those who are affected by the law. Committees can add most value to the scrutiny work of the House by examining legislation closely and commenting on its clarity, effectiveness and accessibility in order to help create good law.

In the area of scrutinising secondary legislation, the House it has stronger formal powers than in relation to primary legislation, because there is no equivalent of the Parliament Acts, but does not often seek to use them. An example is the recent public order regulations, which were drawn to the special attention of the House by the Secondary legislation committee, and widely criticised, but were not voted down.

House of Lords Committees consider policy issues, scrutinise the work and expenditure of the government, and examine proposals for primary and secondary legislation.

In terms of the work of the House of Lords Committees in 2023:

The European Affairs Committee reported on the Brexit referendum and the UK's relationship with the EU.

The Science and Technology Committee released a new report on the negative impacts of artificial light and noise on health and the economy.

The Industry and Regulators Committee published its Ofwat report highlighting that the environmental performance of water companies is at its lowest ever level.

The International Relations and Defence Committee highlighted key challenges in its report on UK defence.

Four new special investigative committees were launched in 2023 to examine AI in weapon systems, the integration of primary and community care, the future of the horticultural sector and the education system for 11–16-year-olds in England.

The size of the House alone has not impeded this work. One crucial factor to consider is that the Government of the day does not have an overall majority in the House of Lords. This ensures that the views of the House can prevail over the views of Government, subject of course to the provisions of the Parliament Acts 1911 and 1949. The process of “ping-pong” which is the “to and fro of amendments to Bills between the House of Commons and the House of Lords” determines the final provisions of a bill where there has been disagreement between the two Houses of Parliament.

Should the size of the House of Lords be limited? If so, to what size and how will that be achieved?

Our Comment

If there is to be a limitation on the size of the House, it should be provided for in statute. An alternative to term limits would be a mandatory retirement age - as recommended by the Institute for Government: [rebuilding-and-renewing-the-constitution.pdf \(instituteforgovernment.org.uk\)](https://www.instituteforgovernment.org.uk/sites/default/files/2023-06/rebuilding-and-renewing-the-constitution.pdf). That would be consistent with other public office holders, such as judges.

Should there be a term limit for membership to the House of Lords?

Our Comment

If there is to be a limitation on terms of membership of the House, it should be provided for in statute. An alternative to term limits would be a mandatory retirement age - as recommended by the Constitution Unit

recently - [rebuilding-and-renewing-the-constitution.pdf \(instituteforgovernment.org.uk\)](https://www.instituteforgovernment.org.uk/sites/default/files/2019-04/rebuilding-and-renewing-the-constitution.pdf). That would be consistent with other public office holders, such as judges.

How effective are current arrangements/processes for removing or suspending Members from the House of Lords?

Our Comment

The [House of Lords Reform Act 2014](#) provides that a member convicted of a serious offence will cease to be a member of the House i.e. is disqualified from attending House proceedings and is no longer entitled to receive a writ of summons. A 'serious offence' is a criminal offence where the sentence is for one year or more or the member is ordered to be detained indefinitely. However, the member's peerage title is unaffected by these sanctions. These provisions are broadly in line with those affecting MPs.

The [House of Lords Code of Conduct provides that any member who is imprisoned in the UK will be deemed to have breached the code.](#)

The [House of Lords \(Expulsion and Suspension\) Act 2015](#) enables the House to expel or suspend a member by resolution in circumstances other than for non-attendance or being sentenced to over a year in prison. Those expelled cease to be a member of the House but those suspended are not entitled to receive a writ of summons during the suspension period.

The Institute for Government has analysed the legislation and notes that: "Some peers have been suspended on these grounds: for example, Lord Maginnis was suspended from the Lords for 18 months in December 2020 for breaking the Code of Conduct: [The conduct of Lord Maginnis of Drumglass \(parliament.uk\)](#). Eight peers have had their membership of the Lords ended due to non-attendance.": [Joining and leaving the House of Lords | Institute for Government](#).

What expectations should be placed on Peers as regards participation in House of Lords business?

Our Comment

The House of Lords Code of Conduct is designed to:

- a) provide guidance for members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary duties. Except for paragraphs 18 to 25, the Code does not extend to members' performance of duties unrelated to parliamentary proceedings, or to their private lives. Paragraph 18 sets out the standards of conduct required of members in their treatment of those with whom they come into contact in the course of their parliamentary duties and activities, whether on the parliamentary estate or elsewhere.
- b) provide the openness and accountability necessary to reinforce public confidence in the way in which members of the House of Lords perform their parliamentary duties.

Specifically, the Code requires that members of the House:

- (a) must comply with the Code of Conduct;
- (b) should act always on their personal honour in the performance of their parliamentary duties and activities;
- (c) must never accept or agree to accept any financial inducement as an incentive or reward for exercising parliamentary influence;

- (d) must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.

Members must also comply with the general principles of conduct identified by the Committee on Standards in Public Life. Members are also required to register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions and declare those interests when speaking in the House or communicating with ministers or civil servants: [Code of Conduct for Members of the House of Lords - UK Parliament](#)

An individual being offered a peerage should have it made clear that not only would compliance with the Code and standards be required, but also the person would be expected to make regular contributions to the business of the House and that failure to attend may result in membership being ended.

Role of the House of Lords and relationship to the House of Commons

Is the House of Lords still effectively carrying out its role as the 'Revising Chamber'?

Our Comment

Yes, we have direct experience of the House carrying out its role as a revising Chamber.

Specifically, we point to the recent work of the House in connection with the Retained EU Law (Revocation and Reform) Bill, the Northern Ireland Troubles (Legacy and Reconciliation) Bill and the Illegal Migration Bill.

In each of these bills the Society promoted amendments which were tabled by Peers, debated in full and enabled the Government to take stock of the concerns which we and other bodies had raised: [Our input to parliamentary bills | Law Society of Scotland \(lawscot.org.uk\)](#).

What other roles should the House of Lords perform in the UK constitutional arrangements?

Our Comment

The House of Lords has already promoted inter-parliamentary dialogue within the UK by being a forum to bring together members of the UK Parliament and legislatures in Scotland, Wales and Northern Ireland: [Launch of the Interparliamentary Forum - UK Parliament](#). However, that opportunity does not simply relate to the devolved structures but should extend to other aspects of devolution including City Mayors, participants in regional devolution plans and Local Authorities.

The House of Lords committees should be able to travel to the other legislatures and to hold meetings with devolved interests. This will enable committees to indicate their willingness to engage.

Internationally there are a number of existing groups which the committees can enhance participation with including the Inter-Parliamentary Union, the Commonwealth Parliamentary Association and the Association of State Legislators. Other international bodies generally which have an interest or capacity in law making, treaty formulation and legal process would be useful to engage with. Examples of this group would include The United Nations, the EU institutions, the Council of Europe, the Hague Conference on Private

International Law and the International Bar Association. Bilateral relationships with other legislatures should also be enhanced, particularly with the Upper Houses of European national legislatures. The withdrawal of the UK from the EU will require the strengthening of such bilateral relationships to maintain a common level of understanding about the objectives, challenges and attitudes which prevail in the UK and among member states.

The House also has a role in relation to the significant changes which have taken place in the recent past in areas such as:

(a) The UK's Withdrawal from the EU

The Retained EU law (Revocation and Reform) Act 2023 will require scrutiny of Assimilated Law and continued horizon scanning of changes in EU law which may have an implication for law in the UK. The House has already rationalised and modernised aspects of the committee structure by creating a number of new committees or repurposing existing ones. As the Government's aspirations to create a 'Global Britain' and to create a network of trade agreements proceed there will be a need for ongoing scrutiny requirements. Furthermore, developments in Private International Law and Citizens' Rights may require committees to oversee these areas.

(b) Devolution

Since 1998 devolution has developed considerably with significant increases in powers in 2012 and 2016 for Scotland and in 2006 and 2017 Wales and more powers made available to the Northern Ireland Assembly. Changes in the law such as the UK Internal Market Act 2020 and the Retained EU law (Revocation and Reform) Act 2023 have an impact on the powers of the devolved legislatures and administrations. Devolution has also developed in England with enhanced power for City Mayors and proposals for regional devolution.

Notwithstanding increasing powers for the devolved legislatures and administrations the continued relevance of Parliament as the legislature for reserved powers and continued ministerial decision making particularly in connection with finance and strategic matters still rests with Whitehall. House of Lords committees are well placed to consider and examine proposals by the UK Parliament and Government which will have an impact on the devolved arrangements across the UK for example the [Common Frameworks Scrutiny Committee - Summary - Committees - UK Parliament](#).

(c) Technological Change

Changes to technology have revolutionised the ways in which people communicate, do business, form networks and learn. The use of data and the influence which that use can bring has increased and can be a force for good but can also create controversy when it is abused. Technology is developing quickly, the use of robots and Artificial Intelligence leaves policy development behind. Because of the Covid-19 pandemic the use of audio-visual technology became commonplace at home in the workplace and in legislatures across the UK. The House could explore how its work can be enhanced by the application of IT solutions. The renovation of Parliament presents an opportunity to accommodate technology in a widespread way and, as far as possible to anticipate advances in technology.

(d) Covid-19 Pandemic

The pandemic was the most serious recent public health crisis to have affected the UK and had significant global impact. We recognise that the deaths of 227,000 people in the UK have had a major adverse impact on the families, relations and friends of those who died. The House of Lords is well placed to consider the output of the UK and Scottish Covid-19 Inquiries and in providing advice to Government on how to respond

and in holding the machinery of Government to account for the handling of the pandemic. The House will also have a role in ensuring that any constitutional failings which occurred during 2020-2022 are rectified and that legislation to deal with a future public health crisis is constitutionally appropriate. Covid-19 is still a danger to the public and other potential public health risks may affect the population in the future. The expertise, knowledge and experience of the House will undoubtedly be called upon to assist in preparing the statute book for the future.

Further Reform of the House of Lords

We have in the past commented on proposed reform to the House of Lords. There are recent proposals that the House of Lords should be replaced with a new second chamber of Parliament: An Assembly of the Nations and Regions. [Commission-on-the-UKs-Future.pdf \(labour.org.uk\)](#). Indeed, over time there have been a number of proposals regarding how the House of Lords could be radically reformed or replaced. As the Institute for Government has stated “Large-scale House of Lords reform is the most obvious proposal, which is more disputed, and would require further work – and potentially significant consultation and deliberation – before being ready to be implemented.”. In any event these proposals are not part of this Inquiry.

