

Unlock Democracy's evidence to the Joint committee on the Draft House of Lords reform Bill

About Unlock Democracy

Unlock Democracy (incorporating Charter 88) is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy runs the Elect the Lords campaign to campaign for an elected second chamber. For more information about Unlock Democracy please see www.unlockdemocracy.org.uk

About this submission

In addition to writing our own response to the draft Bill, Unlock Democracy sought the views of our members and supporters. We ran a brief online survey on the key elements of the draft Bill as well as handing out leaflets at street stalls. We agreed to forward any comments people made regardless of whether or not they supported our policy. Over 4,100 people took up our offer, either filing in detailed comments on specific aspects of the proposals or just answering the survey. Many chose to do both. After discussion with the committee clerks we have submitted over 4100 individual responses as a separate word document but we refer to the survey results throughout our submission and the data set is included as an appendix.

Executive Summary

Unlock Democracy supports the following:

- A fully directly elected second chamber with broadly the same powers as the current House of Lords;
- Members elected in halves for renewable 8-10 year terms;
- An electoral system that gives the voter choice between individual candidates and political parties such as the Single Transferable Vote or a number of open list systems;
- A considerably smaller reformed second chamber, between 250 and 350 members;
- Experts should be brought into the second chamber through the Committee system to consider specific Bills rather than as full time members of the legislature;
- Government Ministers should not sit in the second chamber so that there is a clear distinction in roles and powers between the two chambers;

- The second chamber should have a role as a ‘chamber of the union’ representing the nations and regions of the UK at Westminster;
- Members of the second chamber should be barred from standing for the House of Commons for a lengthy period;
- There should be no places reserved for religious representatives in the second chamber;
- The second chamber should be called the Senate;

How the draft Bill fulfils its objects

1. Unlock Democracy very much welcomes the fact the government has published a draft bill. In the one hundred years that electing the second chamber has been seriously discussed, this is the first time that a government has presented a bill to Parliament. This is a significant step forward in its own right. We also welcome the fact that the Bill has been published as a draft and can benefit from pre-legislative scrutiny.
2. Unlock Democracy is broadly supportive of both the proposals and drafting of the Bill. We are pleased that the government is moving ahead with plans for an elected second chamber, selected on a different basis to the House of Commons and that they are proposing to end the link between the Peerage and membership of the legislature. The white paper clearly sets out that some elements of the policy are still open for debate and we have entered into this consultation in that spirit. There are some areas where we take a different view from the government. For example we believe that members of a reformed second chamber should be elected for terms of no more than 10 years, that they should be able to stand for re-election once and that the house should be elected in halves rather than thirds.
3. While we understand the stated logic behind drafting the legislation for the most complicated options, but leaving some questions open in the white paper, as an organisation that supports a fully elected second chamber we would have preferred to see this included in the draft bill.
4. One criticism that we would make of the white paper and draft Bill is that they very deliberately sidestep the issue of the powers of a reformed second chamber. The White Paper simply states that the powers would be the same as for the current House of Lords. Unlock Democracy does not accept that an elected second chamber will undermine the supremacy of the House of Commons but we think that this concern should have been addressed in these proposals. We have outlined below how we would do this.

The effect of the Bill on the powers of the House of Lords and the existing conventions governing the relationship between the House of Lords and the House of Commons

5. It has been asserted that an elected second chamber would no longer be bound by the Parliament Acts or the conventions that currently govern the relationship between the two chambers. Unlock Democracy does not accept this argument.
6. The example of the Australian Senate also demonstrates that it is possible for a directly elected second chamber, even one with more formal powers than the House of Lords, to be constrained by convention. Even though the Senate can, periodically, make life very difficult for Australian governments, there is no attempt to try and move beyond being a reviewing chamber. The Australian Senate passes 74% of Bills sent to it without making any changes¹, leaving the House of Representatives clearly the prime chamber.

The role and functions of a reformed House;

7. Unlock Democracy and its predecessor organisations have long been committed to the reform of the House of Lords. We believe that a second chamber has a crucial role to play in the British constitution. Wherever a Parliament has only one chamber, the dominant party within it is in a position to abuse its power. Particularly in the UK, where the House of Commons is dominated by an unusually strong Executive, it is vital that a second chamber – democratically legitimate, and constituted differently from the lower House – exists to hold it in check.
8. Like the Government, we envisage a reformed second chamber as a deliberative body, complementing rather than duplicating the work of the Commons. It should provide additional capacity to an overburdened lower House, bringing a different perspective to the review of legislation and serving a discrete constitutional role.
9. In addition Unlock Democracy believes that the second chamber should play a specific role in representing the concerns of the nations and regions of the United Kingdom at Westminster. As the second chamber is elected on a different basis to the House of Commons, with considerably larger constituencies and with no mandate for constituency work, they can take a broader view when scrutinising policy. This is a role carried out effectively by the Australian and US Senates, although they do this through malapportionment of seats whilst we would prefer

¹Stanley Bach, "Senate Amendments and Legislative Outcomes in Australia, 1996–2007", Australian Journal of Political Science 43, no. 3 (September 2008), p 409 cited in Renwick A House of Lords Reform Briefing Political studies Association 2011

to use the electoral system and a minimum level of candidates per electoral district to ensure fair representation.

10. Unlock Democracy supports a reformed second chamber exercising the same powers as the current House of Lords. Specifically we believe the second chamber should be able to delay legislation for one year as is currently the case. Unlock Democracy also believes that the reformed second chamber should retain the power to veto secondary legislation. Secondary legislation receives very little scrutiny and the power of veto provides an important if rarely used check on this power.
11. Unlock Democracy believes the second chamber should develop its current role in protecting certain constitutional principles. Currently the Parliament Acts give the House of Lords a specific role in preventing a Parliament being extended beyond five years without a general election. We believe it would be beneficial for the second chamber to take on a similar role in relation to core constitutional documents. There would need to be extensive consultation over exactly which Acts or constitutional principles should be included and what the level of protection there should be. It may be for example that it would be determined that certain constitutional documents such as the Scotland Act 1998 or the Human Rights Act would be exempt from the Parliament Acts or could not be repealed without a two-thirds majority in the second chamber.

The means of ensuring continued primacy of the House of Commons under any new arrangements

12. The debate on how the primacy of the House of Commons should be maintained is an important one. Unlock Democracy is committed to the House of Commons remaining as the prime chamber within the UK legislature. However we also campaign for a stronger Parliament and accountable government, and do not accept that the pre-eminence of the House of Commons should mean that it always gets its own way.
13. Unlock Democracy accepts that it is likely that an elected second chamber would be more willing to use the powers that it has. Dr Meg Russell of the Constitution Unit at UCL has published a detailed analysis of the Government's defeats in the House of Lords since the removal of the hereditary peers in 1999² which suggests that an elected second chamber would be more assertive in its dealings with the House of Commons. The significance of this research is not the number of defeats which the last Labour government suffered, which although high was comparable to other Labour governments³. Rather this research shows quite clearly where the House of Commons has rejected Lords amendments, the

²<http://www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords/lords-defeats>

³<http://www.parliament.uk/about/faqs/house-of-lords-faqs/lords-govtdefeats/> accessed 1 October 2011

second chamber has, since the removal of the hereditary peers, become more assertive and has been more willing to insist upon the changes it wants.

14. However it is important not to overstate the significance of this change. It is still the case that much more frequently the House of Lords agrees to give in and accept the decision of the House of Commons. This is not the second chamber challenging the primacy of the House of Commons; it is merely exercising its existing powers. Unlock Democracy sees this as part of a stronger Parliament using checks and balances to hold a powerful Executive to account, rather than a challenge to the primacy of the House of Commons.
15. Unlock Democracy recognises that there will sometimes be disagreements between the two Houses in Parliament, as indeed there are now. We believe that there needs to be a formal process for resolving any disputes that may arise. Currently this is managed through the use of conventions. Unlock Democracy believes that an elected second chamber would benefit from a more formal structure, such as Joint Committee to deal with such issues as may arise and to foster an effective working relationship between the two Houses.
16. Joint Committees are a common tool in bicameral parliaments for resolving disputes between two chambers, although some are less effective than others. We would be keen to see a Joint Committee set up along the lines of the German and US models whereby the committee is permanent, created at the beginning of each Parliament, with senior members of both houses chosen to serve on the committee. Although the committee being permanent means the members may not be familiar with the detail of the Bill in question, it allows the members of the committee to build effective working relationships and may also help to take some of the heat out of the debate.
17. Interestingly in the online survey that Unlock Democracy conducted, of the 3659 respondents 2690 supported the creation of a Joint Committee to resolve disputes once a Bill had been rejected twice by the second chamber. The other popular option was that the House of Commons should be able to override a veto with a super majority - if two thirds vote in favour of the disputed Bill. This system which in Japan and a version of this is used in Spain. However we believe that negotiation through the committee rather than a more adversarial super majority vote is a more constructive way to resolve differences between the two chambers.
18. Unlock Democracy believes that there should also be structural constraints built in to the design of a reformed second chamber to ensure the primacy of the House of Commons. These are addressed in more detail below but would

include the use of staggered elections and government Ministers being selected from the members of the lower house.

The size of the proposed House and the ratio of elected to non-elected members;

19. Unlock Democracy supports a fully, directly elected second chamber. This is consistent with the will of the House of Commons expressed in the vote of March 2007. Although both the 80% and 100% elected options received majorities, it was only the fully elected option that received an absolute majority from across the House. Also in the immediate aftermath of the vote in the House of Commons, ICM conducted a poll for Unlock Democracy that found the public supported a fully elected chamber by more than 2-1.⁴ In the recent online survey that Unlock Democracy conducted, of the 3987 respondents that answered this question 57.69% supported a fully elected second chamber while 29.90% favoured an 80% elected chamber. Only 12.42% supported other options for reform.

20. It is often argued, including by those who support an elected second chamber, that a small number of appointed members should remain in the second chamber to guarantee an independent, expert chamber, to allow for the appointment of under-represented groups and to facilitate the appointment of Government Ministers to the second chamber. Unlock Democracy does not support these arguments and we set out alternative responses to these concerns below.

Independence

21. The House of Lords is often held up as an example of a less partisan chamber that benefits from the presence both of members who have no party affiliation and more independent minded representatives of the parties. Unlock Democracy does not support this assertion.

22. Dr Meg Russell and Maria Sciara's detailed analysis of votes in the House of Lords from 1999-2006⁵ showed that while there were various groups from the independent Crossbenchers and Bishops, to party rebels and opposition parties that could contribute to a government defeat, the key factor in most cases was the opposition parties voting cohesively. In other words the government was

⁴ Asked "MPs have recently decided that the House of Lords should be fully elected. Do you approve of this decision or disapprove?" the survey of 1,003 people polled by ICM found that 63% supported the reform, compared to just 26% who disapproved. See <http://www.unlockdemocracy.org.uk/?p=710> for full details

⁵ Meg Russell and Maria Sciara, "The Policy Impact of Defeats in the House of Lords", *British Journal of Politics and International Relations* 10 (2008), 517-89

more likely to suffer a defeat because of strong partisan voting than the presence of a significant group of independents in the chamber.

23. Rebellions in the House of Commons generally receive more media attention than those in the House of Lords. In part this is because they are more obvious; there are a number of reasons, other than a rebellion that governments can be defeated in the Lords. Party discipline is also generally accepted to be weaker in the Lords than the Commons so defeats are not seen as such a threat to the government's authority.
24. The website www.publicwhip.org.uk provides statistics on the voting records of both MPs and Peers and how often individuals take a different view from the main party group. Analysing the number of rebellions in both chambers since 2005, we found that not only are there slightly more rebellions in the House of Commons than the House of Lords but also that rebellions in the House of Commons are more likely to involve more than 10 people than in the House of Lords.
25. Using the public whip data and their definition of rebellion, we found that in the 2005-2011 period at least one person rebelled in 50.53% of divisions compared to 47.74% in the House of Lords, although there were fewer votes in the House of Lords. Dr Alan Renwick has analysed the public whip data differently, looking at rebellion levels within party groups and found that although rebellion rates are slightly higher in the House of Lords they are still very low⁶.
26. It is also interesting to note that when rebellions happen in the House of Commons they tended to be larger - 17.05% of rebellions in the House of Commons involved 10 or more members rebelling compared to 10.24% of rebellions for the House of Lords.
27. It is too early in this government's term to look for trends in voting patterns, but it is interesting to note that the chamber does seem to have been more explicitly partisan, as demonstrated by the response to the Parliamentary Voting System and Constituencies Act, since the recent appointment of a large number of former MPs.

⁶Alan Renwick [House of Lords Reform Briefing](#) Political studies Association 2011p16

28. Unlock Democracy welcomes and supports the presence of independents in UK politics. However we do not believe that appointment is either the best nor only means of giving independents a voice in our legislature. We explore the ways in which independents can be encouraged through different electoral systems below.

Expertise

29. Unlock Democracy agrees that the legislative process can benefit substantially from the involvement of experts. We do not, however, agree that such experts must be full-time members of the legislature in order to have an influence.

30. It has also been argued that a reformed chamber must include an appointed element in order to ensure that the chamber has sufficient expertise to perform its deliberative duties.

31. This idea is to be rejected. Firstly, the current House of Lords is the clearest sign that appointment is not by any means a foolproof way of introducing expertise. A large plurality of sitting life peers – 41.57% – are drawn from active party politics, having served as MPs, MEPs, councillors or party officials; only 26.51% are current ‘experts’. When we look at the Crossbenchers as a group who are appointed for their independence and expertise, only 45.71% of Crossbenchers are expert (10.5% of the House of Lords as a whole).

32. Our full analysis of expertise in the House of Lords is included in Appendix 2. It is very difficult to objectively assess expertise and there is a risk that any such classification can become arbitrary. However we used publicly available biographical information to assess seniority in a career before entering the House of Lords and the length of time since that position was held. This meant that peers who continue to practice their main career whilst also attending the House of Lords received higher scores than those who had retired.

33. One of the arguments in favour of retaining an appointed element to the second chamber is that experts would not be willing to stand for election. We do not find this a compelling argument. Two-fifths of the current membership of the House of Lords have either worked in politics or already stood for elected office so it is reasonable to assume, this experience could be gained through election.

34. We also question the idea that a chamber needs an internal cohort of experts to perform a deliberative role, and doubt their general value to such a chamber once appointed. Many expert members have a valuable contribution to be made in their field – such as sociology, or human fertility – but would be expected to vote on all issues whether versed in them or not. It is far preferable to have a

chamber where expert advice is sought externally as needed – for instance, through the use of select committees or special Bill Committees – and where the final vote falls to democratically elected representatives of the people, who have been suitably informed.

35. One ongoing issue regarding the presence of independent experts in the House of Lords is the levels of attendance that are expected. One reason for the relatively low impact of the Crossbenchers on votes in the House of Lords is that with some notable exceptions they attend and vote far less frequently than party appointees. Dr Meg Russell and Maria Sciara⁷ found that crossbenchers voted on average in just 12 per cent of the divisions they could have voted in between 1999 and 2007, compared to 53 per cent of divisions among Labour members, 47 per cent for Liberal Democrat members, and 32 per cent for Conservative members.
36. Unlock Democracy believes that expertise can more effectively be brought into the legislature through the appointment of special advisers to select committees or to committees to consider specific bills rather than through full time membership of the second chamber. This would ensure that the expertise called in was always relevant and up to date and would not mean that experts had to choose between their existing careers and advising on legislation in their field.

Gender and Ethnicity

37. Some have suggested that an appointed element should be preserved because it will allow for the adequate representation of women and ethnic minorities in the reformed chamber.
38. It is absurd that a chamber composed entirely of elected representatives should be rejected on the grounds that it will not be representative enough. As Unlock Democracy outlined in its evidence to the Speakers Conference on the Representation of Women and Ethnic Minorities in the House of Commons, the most effective means of increasing the representation of under-represented groups is to move to a proportional electoral system with multi-member constituencies.
39. Internationally, the countries that have more representative politics also have multi-member constituencies. This is the case even where there are no quotas in operation. Where parties have the opportunity to nominate more than one candidate they are more likely to nominate a balanced slate than if they can only nominate one candidate. If only one candidate can be nominated, parties will often choose the white, male candidate as he is seen as the more broadly

⁷Meg Russell and Maria Sciara, "Independent Parliamentarians En Masse: The Changing Nature and Role of the 'Crossbenchers' in the House of Lords", *Parliamentary Affairs* 62, no. 1 (2009), 32–52, at p41

acceptable candidate. The myth that women candidates lose votes has wide currency in constituency parties. Often discrimination is justified by blaming the voters, arguing (incorrectly) that the voters would not vote for a woman and the relevant Party could not risk losing the seat. However the Fawcett Society has shown that voters do not penalise women candidates. The problem is that political parties do not select women in sufficient numbers in safe or winnable parliamentary seats⁸.

40. Multi-member seats also offer parties the choice of a number of different proactive measures for selecting candidates from under-represented groups. In the UK, All Women Shortlists are the most well known and controversial form of positive discrimination but there are other mechanisms for encouraging selection of women candidates. For example in list electoral systems some parties 'zip' the party list so that every other candidate is female. Other parties use quotas, often thirds, for candidate selection so that at least a third of the list must be male and a third must be female. Of course it is not just getting on the list that is important but the position on the list which is why this technique is often combined with a quota for the top of the list so that at least one of the top three candidates also has to be female.

41. It should also be noted that these measures can also be used for electoral systems, like STV and open lists, that allow voters to choose between candidates as well as parties and not just closed list systems. Voters of course have the prerogative to choose not to elect female candidates but evidence suggests that this is not the main barrier to women's representation. Indeed in Norway in 1971 women's organisations took advantage of an open list system used in local government elections to dramatically increase the level of women elected. They were able to do this because the type of open list system that was in use, allowed voters to strike through the names of candidates they did not want to support. So although the parties chose the orders of the list campaigners urged voters to go down the list of the party they wanted to support and cross out the male candidates until they reached a female candidate. As a result of this campaign the number of women elected to Councils in some cities rose from around 15-20% to a majority of the Council. Although there was some backlash to this campaign at the next election it changed the way in which political parties in Norway approached drawing up party lists.⁹

42. Unlock Democracy does not believe that reform of the second chamber should be entered into on the assumption that the process by which 80% of members are elected is so drastically flawed and unrepresentative as to need external

⁸J. Lovenduski, and L. Shepherd Robinson, *Women and Candidate Selection in British Political Parties*, Fawcett Society (London: 2002).

⁹For more information see Maitland, Richard E, *Enhancing Women's Political Participation: Legislative Recruitment and Electoral Systems* http://www.onlinewomeninpolitics.org/beijing12/Chapter3_Matland.pdf

correction. The focus should be on establishing an electoral system that takes proper account of voters' needs and wishes, rather than adding undemocratic buttresses to account for an existing system's flaws.

43. Unlock Democracy hopes that the opportunities implicit in creating a new chamber, to ensure that the chamber is more representative and takes advantage of more modern family friendly working practices, are seized. It is very rare in the UK context to consciously design a legislative chamber rather than seek to reform something that has evolved over time. We already have evidence from the creation of the Scottish Parliament, as well as the Welsh and Northern Irish Assemblies, that new bodies can lead the way both in increasing the level of women represented in politics but also in modernising working practices such as the reporting of expenses and engaging the public through the use of petition committees.
44. Finally, while the present House of Lords is slightly better in terms of gender balance and ethnic diversity compared to the present House of Commons, it is worth noting that it is only recently that levels of female representation in the House of Lords have begun to improve. Despite having none of the barriers frequently ascribed to elected chambers, the appointment process has repeatedly failed to produce a genuinely representative second chamber; if appointment worked, there is no reason why it should not produce 50:50 gender balance. There is certainly no evidence that appointment is inherently better for women or ethnic minorities, significant progress can be made in elected chambers if political parties are willing to act.

Size

45. The UK is unusual in having a second chamber that is considerably larger than the first. Unlock Democracy supports the view in the White Paper that the current House of Lords is too large. Partly this is a result of the differing views of membership in the House of Lords and the conflation of the honours system with membership of the legislature. We therefore welcome the fact that the government proposes to break this link.
46. Unlock Democracy agrees that the second chamber should be smaller than the House of Commons in recognition of its different functions and the lack of any constituency role for members of the second chamber. A smaller chamber would also encourage deliberation and a more collegiate method of working than the adversarial House of Commons.

47. Average daily attendance in the House of Lords has increased by 26.3% to 497 in 2010/11 from 394 in 2009/10¹⁰. Even if the reformed second chamber were reduced to the 2009 figure, this would still leave the UK with one of the largest second chambers in the world. Unlock Democracy believes that the scrutiny and revision functions required of the second chamber could be delivered by a full time chamber of between 250-350 members. Therefore we are content with the government's proposal for a chamber of 300 members. Although this would be a significant reduction in the size of the second chamber, we do not believe this would not undermine the current structures and methods of working. Rather it would take into account that all members would serve on a full time basis and would be given adequate staffing support to carry out their roles.

48. Part of the reason why the House of Lords relies heavily on part-time professionals who work outside the House is that members are not paid a salary, receive only a small attendance allowance and have little research and administrative support. Lack of salary also reinforces the metropolitan, affluent profile of the membership of the House of Lords.

A statutory appointments commission

49. Unlock Democracy supports a fully elected second chamber. However if we were to retain an element of appointment we would expect this process to be managed by an Appointments Commission rather than by political patronage. Equally we believe that any members appointed to the second chamber should be from a non-party political background.

50. We share the concerns of many at the way in which large numbers of political appointments were made after the last election. David Cameron has created more peers more quickly than any of his post-war predecessors, having ennobled 117 people in less than a year. This is unsustainable in an already overly large chamber. We also note the concern of Peers at the "fractious atmosphere"¹¹ created by the appointment of so many ex-MPs to the second chamber.

The electoral term, retirement etc

¹⁰ House of Lords Briefing Note System of financial support for Members <http://www.parliament.uk/documents/lords-finance-office/2011-12/briefing-note-april.pdf>

¹¹ Russell, Meg House Full: Time to get a grip of Lords Appointments Constitution Unit 2011 <http://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/152.pdf>

51. The government proposes that members of the second chamber should be elected in thirds for, periods of the 15 years and that they should not be able to stand for re-election at the end of their term. Unlock Democracy is sympathetic to the thinking behind these proposals although we do not come to the same policy conclusions.
52. It is common in elected second chambers for elections to be staggered. This helps to ensure that although both chambers have elected members and therefore have legitimacy the second chamber's mandate is never more recent than the first. It also ensures that there is an element of continuity and institutional memory as it is not possible for all members to be replaced in one election.
53. There are also examples of elected second chambers where the term of office in the second chamber is longer than in the first. This helps to differentiate the two chambers and longer terms can help to create a different culture in the second chamber, as members are not so focused on seeking re-election and can take a longer term view.
54. However a 15 year term is exceptionally long, even for a second chamber. It is two or three times the length of term for many elected second chambers around the world and over a third longer than the longest term currently in operation - 8 years in Brazil and Chile¹². While France used to have terms of 9 years in the second chamber this has been reduced to six years which is only one year longer than the lower house.
55. Whilst we understand how the government came to this proposal by wanting staggered elections and a link to the term of the House of Commons which has now been fixed at five years, we believe that 15 years is too long and does not provide for any accountability.
56. Unlock Democracy would prefer 8 year term of office, linked to two 4 year terms of the House of Commons, however that is no longer appropriate as the term for the House of Commons has been set for 5 years. Therefore we recommend that members of the second chamber should serve for a 10 year term with 150 members being elected every five years.
57. Interestingly of the 3866 people who answered the question on length of term in our online survey, 51.24% supported a term of less than 10 years, while only 9.21% supported 15 year terms. Although we have used 10 year terms for

¹²source Inter-Parliamentary Union Parline Database: www.ipu.org accessed 15 September 2011

modeling purposes in this submission we would hope that if the term limit for the House of Commons were reduced, this would be re-visited.

58. The lack of accountability is further exacerbated by the proposal that members of the second chamber should not be able to stand for re-election. Whilst we are sympathetic to the desire to promote independence among members of the second chamber we believe this has to be balanced with accountability. The only element of accountability on the current proposals is that members will be able to be recalled on the same basis as members of the House of Commons if recall proposals are introduced. We do not believe that this is acceptable.
59. Unlock Democracy believes that members of an elected second chamber should be able to stand for re-election; but only once. This allows for some accountability but also ensures that members of the second chamber will move on. Of the 3921 people who answered this question in our online survey a significant majority, 76.46% supported members being able to stand for re-election.
60. If the reason for non-renewable terms is to promote independence and try and prevent members from using the second chamber as a means of launching a wider political career, then there are other ways that this can be achieved. It is already proposed that there should be a period of time after leaving the second chamber during which former members cannot stand for elections to the House of Commons. We would also support a similar bar on members of the House of Commons moving straight to the second chamber as we would not want to import the culture and working practices of the House of Commons into a reformed second chamber. However we recognise the difficulty that this would pose for political parties who wish to encourage some members of the House of Commons to retire. Our proposals of holding the elections to the second chamber on the same day as the elections to the European Parliament, rather than the House of commons would also have the effect of creating a short quarantine.
61. Unlock Democracy would also recommend that members of the second chamber be resourced in such a way that discourages them from establishing constituency offices and competing with members of the House of Commons for casework. We recognise that it is impossible to entirely prevent this from happening; it is as much to do with the culture of political parties who will expect members of an elected second chamber to support their campaigning work for other elections and bodies, as the career aspirations of the individual concerned. However we do believe that this can be discouraged in more nuanced ways, that also allow for some element of accountability, rather than the blunt tool of non-renewable terms of office.

Recall

62. The White Paper proposes introducing a system of recall, along the same lines as the system to be introduced for the House of Commons. While Unlock Democracy supports recall in principle, particularly in the case of an elected second chamber in which members will be elected for extended time periods, we do not believe replicating the model proposed for the House of Commons would be sufficient.
63. We support a model of recall in which, if 5% of an electoral district calls for it, a recall ballot must be held on the same day as the next second chamber election. Only members of the second chamber not up for election in this election could be recalled in this way. Petitioners must give a reason for recalling the member, but it could be for any reason - not restricted to parliament having already disciplined the member.
64. If 50% of voters support recalling the individual, that member will be excluded from the chamber and the number of members to be elected for that constituency in the subsequent election will be increased by one.
65. We believe this model would ensure accountability throughout the member of the second chamber's term of office without adding an unnecessary administrative burden or disadvantaging minority candidates.
66. The system of increasing the number of members to be elected for that particular constituency could also be used to fill casual vacancies at the next opportunity.

Retirement

67. Unlock Democracy welcomes the government's proposal that members for the reformed second chamber should be able to retire. This is a particularly important provision when combined with long terms of office as it is possible a members circumstances may change during a 10 year period, in ways that they could not have predicted when they stood for office.

The electoral system preferred;

68. Unlock Democracy is pleased by the Government's recognition that members of the reformed upper chamber must be elected on a different basis from members of the House of Commons. There is widespread consensus that the second chamber should have a different culture and outlook from the House of Commons, and that members being able to exercise independence of judgement is essential. If the reformed chamber is to complement the work of the House of Commons it must be able to address legislation from a different perspective.
69. Unlock Democracy welcomes the rejection of closed list systems such as is used for elections to the European Parliament. Closed list systems encourage

candidates for the second chamber to focus on the political party rather than the general public as a means of getting elected. Under such schemes, political parties have a huge degree of control over the chamber's final membership. This is unhealthy for a democracy; it would lead to what is essentially a system of political appointments by another name.

70. Unlock Democracy does not endorse any particular electoral system. Electoral systems can be modified to achieve different ends and as such we assess any proposed system on the effects that it will have rather than just its name. We support the use of a proportional electoral system that gives the voter the opportunity to choose between different political parties and individual candidates. The government has proposed that either the Single Transferable Vote or Open List system should be used to elect members of the second chamber. We have outlined our views on these systems below. However, we note that there was a very strong preference among the 3671 respondents who answered this question on our online survey, with 86.33% favouring the use of STV.

Single Transferable Vote (STV)

71. STV uses preferential voting in multi-member constituencies. Each voter gets one vote, which can transfer from their first-preference to their second-preference and so on, as necessary. This means that fewer votes are 'wasted' (i.e. cast for losing candidates or unnecessarily cast for the winner) under STV. Therefore most voters can identify a representative that they personally helped to elect. Such a link in turn increases a representative's accountability. This strengthening of accountability would be particularly beneficial if, as we recommend, members of the second chamber served for long non-renewable terms of office.

72. With STV the design of the ballot paper has a significant impact on the way the electoral system is used by voters. STV ballot papers can range from a larger version of that already used in UK general elections to a ballot organised by party groups where the candidates are listed in the order chosen by the political parties. Ireland, Australia and Malta all use versions of STV to very different effect because of the different designs of the ballot paper.

73. STV in large multi member constituencies is a proportional system that allows voters to choose between political parties and individual candidates. It is also successfully used in the UK already (for Northern Irish local and assembly elections and Scottish local elections). Unlock Democracy would therefore support the use of STV for elections to the second chamber.

74. We would strongly oppose the introduction of Australian-style STV, in which voters have to choose between essentially voting for a closed list, or voting "below the line" and having to express a preference for every single preference.

In practice, this is a closed list system by another name. Voters should only have the option of voting for candidates and should be free to express as many or as few preferences as they desire.

75. However, one of the issues with STV is that voters are presented with a large number of individual candidates from which to express a preference for. Larger multi-member constituencies are not significantly more proportional than medium sized ones yet have the potential to cause unnecessary confusion for voters. We therefore recommend that, if STV is used, constituencies are limited to between 5 and 7 members.

Open Lists

76. Party-list systems guarantee a high degree of party proportionality and ensure that every vote has equal value. Across the globe, list systems exhibit a lot of variation, chiefly determined by the size of districts, thresholds for securing seats and the manner in which the seats are allocated.
77. There are large numbers of open list systems that allow voters to choose between both candidates and parties. However, in some list systems the choice is more formal than real. If a list system were to be used it should be a completely open list system. The system used in Finland where voters can vote for an individual candidates and the vote also counts towards the party total, may be of interest. This was the system supported by the Conservative Party during the debates on the European Parliamentary Elections Act 1999.
78. There are a number of systems that can be used to translate votes into seats depending on whether you wanted to weight the system in favour of encouraging smaller parties and minority voices or to ensure that parties received a significant level of support before winning seats. Where list systems are used in the UK the D'Hondt method is used but the Sainte-Laguë method, the Huntington-Hill method and the largest-remainder method would also be possible. Overall we would recommend that Sainte-Laguë is used as it would produce a more proportional result than the D'Hondt method, which tends to benefit larger political parties.

Constituency Size

79. As already outlined Unlock Democracy believes that the second chamber should be constituted differently from the House of Commons to emphasise the different role that it plays in the governance of the UK.
80. Currently membership of the House of Lords is disproportionately skewed towards London and the South East. We do not believe this would be desirable in a reformed chamber. In particular Unlock Democracy believes that the second

chamber should be a 'chamber of the union' and play a role in representing the nations and regions of the UK at Westminster. This regional voice would emphasise the representativeness of an elected second chamber, without being seen to compete with the House of Commons.

81. When considering constituency size it is necessary to balance the needs of effective electoral administration with the need to create constituencies that have some meaning for the public. Regional boundaries are often seen as arbitrary, created for the ease of administrators with no regard for the sense of identity of local communities. It is not always easy to find a balance between these competing factors.
82. Unlike members of the House of Commons members of the second chamber will not be responsible for casework; therefore it would be feasible to have large regional constituencies. We do not believe that counties would be large enough units to work with a proportional multi-member system and so we do not consider this to be a viable option. The alternative would be to use the existing regional boundaries used for the European Parliamentary elections, or to create some entirely new constituencies.
83. On balance Unlock Democracy agrees with the government proposal that the 12 electoral regions already used to elect members of the European Parliament should also be used as constituencies for members of the second chamber, although these will need to be subdivided into 1-3 constituencies if STV is used. While they are too large to reflect more than the most basic regional identities they are easy to understand and are already in use.

How many members should each constituency elect?

84. As already outlined, Unlock Democracy supports the use of a broadly proportional electoral system using large regional constituencies and electing more than one representative per election.
85. For this to be effective and proportional in practice there would need to be a minimum number of representatives per constituency elected at each election. Currently for the European Parliament elections the minimum per region is three MEPs. It would be possible to use this as the minimum for elections to the second chamber, but this would not allow for the expression of political diversity in the smaller regions. As we want the second chamber to have a particular role in representing the regions we do not think this would be appropriate.
86. While we would support allocating members of the second chamber to each region in broadly the same way that the Electoral Commission currently allocates members of the European Parliament, Unlock Democracy would support five

being the minimum number of candidates being elected to the second chamber at each election. This would mean that the smallest region in the UK, Northern Ireland, would have a minimum of 10 representatives in the second chamber, with five being elected every five years. This would be sufficient to be proportional but would also allow the political diversity of smaller regions to be reflected in the second chamber. We would also recommend using the Sainte-Laguë method as this would marginally benefit smaller regions.

87. The maximum number of representatives per constituency can either be determined by the population of the area, as is currently the case for elections in the UK, or on the basis of strict equality for each area regardless of population, as is the case with the US Senate.
88. The system used in the US Senate guarantees equal representation for each state regardless of the size of population. It was known to be distorting when the system was created and has become more so over time. In 1787, the factor was roughly ten times (Virginia to Rhode Island), whereas today it is roughly 70 times (California to Wyoming, based on the 1790 and 2000 census). Unlock Democracy does not believe this would be a suitable system for the UK - especially since the current governmental regions in England were created primarily for administrative convenience.
89. As already mentioned, the current House of Lords is dominated disproportionately by members from London and the South East which emphasises a general perception that governance in the UK is very London-centric. If the number of the representatives per constituency were determined purely on the basis of population then this would give London and South East far more members than other less populated areas of the UK. This would not facilitate the second chamber playing a role as a 'chamber of the union'.
90. Any system based on population will inevitably give a large number of representatives to London and South East as they are the most populous areas the UK. However it would be possible to use a degressive system so that the difference between the representation of the most populous and least populous regions was less extreme.
91. Below, we have included two models: the first assumes that half of the chamber is elected every five years (150 members to be elected per election) while the second assumes that one third of the chamber is elected every five years (100 members to be elected per election). In each, we have assumed that regions should have a minimum of five members and have allocated seats using the Sainte-Laguë method.

92. This model highlights some of the problems with the government's proposed model of electing the chamber in thirds. The 100 seat model would make it harder for parties to ensure their candidate lists ensure gender balance and include sufficient representation of other under-represented groups. To ensure sufficient political plurality, the smallest regions would have to be significantly over-represented compared to the rest of the country. It would also be significantly harder to introduce STV using this model as constituencies would either be less proportional or harder to manage. In addition to the undesirability of long, non-renewable terms, we believe this demonstrates the desirability of adopting the half-elected model.

Table 1 - Half elected every 5 years

Region	Population (millions)	Seats per region per election	STV Constituencies
North East	2.638	6	1
North West	7.193	17	3
Scotland	5.206	12	2
Northern Ireland	1.812	5	1
Yorkshire and The Humber	5.621	13	2
Wales	3.038	7	1
West Midlands	5.662	13	2
East Midlands	4.825	11	2
East of England	6.179	14	2
South West	5.62	13	2
London	8.114	19	3
South East	8.871	20	3
Totals	64.779	150	24

Notes:

- The effect of allocating a minimum of five seats per nation/region is that Wales and the North East get an additional seat each, and Northern Ireland would get two additional seats.
- Assumes that between 5 and 7 members are elected to each STV Constituency.

- The D'Hondt method yields exactly the same result in this case.

Table 2 - One third elected every five years

Region	Population (millions)	Seats per region per election	STV Constituencies
North East	2.638	5	1
North West	7.193	11	2
Scotland	5.206	8	1-2
Northern Ireland	1.812	5	1
Yorkshire and The Humber	5.621	8	1-2
Wales	3.038	5	1
West Midlands	5.662	9	1-2
East Midlands	4.825	7	1
East of England	6.179	9	1-2
South West	5.62	8	1-2
London	8.114	12	2
South East	8.871	13	2
Totals	64.779	100	14-19

Notes:

- The effect of allocating a minimum of five seats per nation/region is that Northern Ireland gets an additional seat while the South East gets one fewer.
- Allocating between 5 and 7 members to each STV Constituency would be impossible using this model; the range would have to be extended to either 4-7 (which would be less proportional) or 5-9 (which would be less manageable).
- If D'Hondt is used, the South East would gain a seat while the West Midlands would lose a seat.

Independents

93. Unlock Democracy does not accept that it is necessary to retain an appointed element in the second chamber to ensure that independents have a voice. It would be possible for independents to be successful in either of the proposed electoral systems.

94. The evidence of elections to the devolved chambers and the European Parliament, has already shown that voting habits are different depending on the chamber. For example the SNP received 45.4% of the votes cast in the 2011 Scottish Parliament elections and was able to form a majority administration in Scotland, despite only receiving 19.9% of the vote in the 2010 House of Commons election. Equally UKIP gained 16.5% of the votes cast in the 2009 European Parliamentary election but only gained 3.10% votes in the 2010 general election. In part this reflects differences in electoral systems however it is also clear that there is a public desire to support parties other than the three largest UK parties.
95. Neither open lists nor STV would disadvantage independent candidates in the way single member plurality (the system used to elect the House of Commons) does. STV would enable voters to express preferences between both independent and partisan candidates without having to worry about their vote not counting. Open list systems do not allow for voters to transfer their vote in this way, but larger seats would ensure that independent candidates with broad support could still get elected. In addition, independents would also have the option of standing on a slate, as the Jury Team¹³ demonstrated in the 2010 election. We are confident that if the public wants to elect independent members to the second chamber they will do so.

Timing of elections

96. The government has proposed that elections to the second chamber should be held at the same time as those to the House of Commons. This would have the advantage of reducing the costs of the elections to the second chamber and potentially increasing turnout, as the country would already be going to the polls. We agree with the government that combining elections is a sensible strategy. However we would prefer that the elections for the two chambers of Parliament are not held on the same day. In part this is a means of reinforcing the primacy of the House of Commons and emphasising the different roles that the different chambers play in the legislature.
97. Therefore, for as long as the House of Commons term is fixed at 5 years we believe that elections to the second chamber should be held on the same day as those for the European Parliament. This would mean the first elections being held in 2014. If the term of the House of Commons is reduced to 4 years, then

¹³ <http://www.juryteam.org/>

we would suggest holding the elections on a day when most people in the UK are already going to the polls. We would suggest holding them on the same day as the Greater London Assembly, Scottish and Welsh local elections - most English local authorities outside of London also have elections on this day.

Transitional arrangements;

98. The government has set out a number of options for moving forward to an elected second chamber. We support the government's view that having a period of transition would be welcome and beneficial for the elected members. As it is intended that members should be elected in tranches, a transition in stages should be feasible and the government has shown how this can be achieved at different speeds.
99. Unlock Democracy's strong preference is to move more quickly to a smaller chamber, and to reduce the current members of the House of Lords down to 150 when the first elected members first take office (assuming a model in which half are elected every five years). This would help to establish a new culture within the reformed chamber and establish new working practices. It would also dramatically reduce the costs of the new chamber. It is for others to explain how the cost of more leisurely transitional arrangements can be justified.
100. It would be a matter for the existing members of the House of Lords to determine who should remain as transitional members of the second chamber. We note that a similar process was successfully undertaken when the majority of the hereditary peers left the chamber in 1999.
101. The only option we believe to be impracticable is for all current Peers who wish to remain in the chamber to do so for a full electoral cycle. We are already in a situation where the numbers in the House of Lords can make effective working difficult. This model would lead to the second chamber growing even larger in size, guarantee that the unelected members continue outnumber the elected members for more than a decade and ensure that the costs of the second chamber would rise exponentially before coming down again, to no identifiable purpose.

The provisions on Ministers and Bishops and Hereditary Peers;

102. Unlock Democracy does not support specific places for religious representation in the second chamber. Rather we believe that these views can be represented by - and to - elected members.
103. Unlock democracy agrees with the government proposal that hereditary peers should not have reserved places in a reformed second chamber, although we agree that they should be able to remain as transitional members and be free to stand for election. The agreement in 1999 was that 92 hereditary peers would

remain in the chamber until the second stage of reform. When we move to an elected second chamber that condition will have been met and it would be inappropriate for the hereditary peers to remain. Unlock Democracy does not believe that a seat in the legislature should be a birthright.

104. Unlock Democracy believes that government ministers should not sit in the second chamber. Confining government ministers to the Commons would help to distinguish the two chambers, secure a degree of independence for the second chamber and emphasise the primacy of the Commons. It would also end the current absurd practice whereby ministers who happen to be members of the Lords cannot be held to account by the House of Commons.

105. The scrutiny of government activity should be a task undertaken primarily by the specialist committees in the second chamber. Specialist committees should have the power to question ministers, and call for papers and evidence from government departments. Individual members would continue to have the right to ask written questions of government ministers. We would also support ending the convention whereby ministers who are also members of the House of Commons cannot take questions in the second chamber.

106. The White Paper proposes that the Prime Minister should retain the right to appoint people directly to the second chamber as ministers. Unlock Democracy believes that this is an unacceptable retention of prime ministerial patronage and that all government ministers should be elected.

Other administrative options such as pay and pensions;

Name

107. Unlock Democracy is concerned that the second chamber should be fully elected on a proportional system and have broadly the same powers as at present. We have a preference for it being called a Senate but we recognise that it may be controversial in some quarters and that there are a number of other names that would be adequate. Our prime concern is the democratic mandate of the second chamber rather than its name.

Salary

108. Members of the second chamber should be paid the same salary and allowances as MPs, reflecting the greater amount of specialist committee work they would be expected to undertake as opposed to the large constituency caseload of MPs.

109. Committees should also have greater financial resources to employ specialist staff or consultants to advise members. The example of the Joint

Committee on Human Rights, which has paid specialist advisers, should be replicated. Committees' administrative resources should also be increased.

Is a referendum needed?

110. Unlock Democracy is sympathetic to the argument that significant constitutional changes, such as House of Lords reform should be subject to a referendum. The case for a referendum is certainly strengthened by the holding of the referendum on the Alternative Vote, which was in many ways a much less significant change to our system of government. However, unlike in the case of electoral reform for the House of Commons, there has been political consensus on this issue for some time. Indeed a predominantly elected second chamber was a manifesto commitment of the three main parties at the last two general elections.

111. Unlock Democracy believes that referendums should be triggered by a popular process rather than by the government of the day. If a minimum of 5% of UK voters petitioned for a referendum on whether to proceed with House of Lords reform, we believe that Parliament should respect that and trigger a referendum. However as we believe this issue is settled and has broad popular and cross-party support, we do not believe the government needs to hold a referendum to legitimise the change.

Tax status

112. Unlock Democracy agrees with the government that all members of a reformed second chamber should be resident in the UK for tax purposes. We think it is regrettable that members appointed to the current chamber have not been held to this standard.

Franchise

113. Unlock Democracy supports the proposal that when the honour of a peerage is separated from membership of the legislature it would be entirely appropriate for the franchise to be changed to allow peers to vote.

Disqualification

114. Unlock Democracy supports the government's proposals on the disqualification regime for the reformed chamber. Although it is unusual in elected second chambers for the age restrictions on candidates to be the same

for both chambers, we very much welcome this proposal. Unlock Democracy believes it should be up to voters to decide whether or not an individual candidate has the right skills and experience to serve in the legislature.

Expulsion or suspension for misconduct

115. Unlock Democracy believes that the expulsion regime for misconduct for members of the reformed second chamber should, as a minimum, be the same as for the House of Lords. However we welcome the fact that the reformed chamber will have the opportunity to go further than this if it wishes.

Disqualification of former members of the House of Lords standing for election as MPs

116. Unlock Democracy agrees with the government that the reformed second chamber should be a scrutinising and revising chamber and should as far as possible be prevented from becoming a training ground for aspiring MPs. We would not want to see situations like in Canada where MPs can lose their seat, be appointed to the Senate, resign their seat to fight an election for the lower chamber and then be re-appointed to the Senate when they are unsuccessful¹⁴.

117. We believe that it is essential that there is a quarantine period during which it is not possible for former members of the second chamber to stand for election to the first. This will help to limit the temptation to do constituency work and with other measures outlines above will help to differentiate the second chamber from the House of Commons.

118. Unlock Democracy also supports there being a period of time during which former members of the House of Commons cannot stand for election to the second chamber.

Lobbying

119. Currently, as long as they do not vote on the issue concerned, it is possible for members of the House of Lords to act as paid advisers on government and legislation. Unlock Democracy does not believe that this is an appropriate role for a members of the legislature and hopes that this practice will not be permitted in a reformed chamber.

¹⁴Senators Fabian Manning and Larry Smith both did this in 2011.

Appendix 1

Results of the Online Survey conducted by Unlock Democracy 14 September - 5 October 2011

1. The government has proposed that the reformed second chamber should be either fully or 80% elected. Do you think it should be

Fully elected	2300	57.69%
80% elected, 20% appointed	1192	29.90%
Other	495	12.42%
Total number of responses	3987	

2. If some members of the second chamber are to be appointed, what types of people would be acceptable?

Anglican Bishops	385	10.64%
Representatives of all faiths	1263	34.89%
Specially appointed government ministers	401	11.08%
People appointed by political parties	425	11.74%
People appointed by an independent body for their professional/academic expertise	2970	82.04%
Representatives of professional bodies (eg. British Medical Association, Royal College of Nursing)	3190	88.12%
Representatives of trade	1745	48.20%

unions		
Members of the public randomly selected from the electoral roll	1269	35.06%
Other	361	9.97%
Total number of responses	3620	

3. MPs are currently elected for up to 5 years at a time. This is usually longer for elected second chambers and the government has proposed they should be elected for 15 year terms. How long do you think members of the second chamber should be elected for?

15 years	356	9.21%
10 years	1529	39.55%
less than 10 years	1981	51.24%
Total number of responses	3866	

4. Should elected members of the second chamber be able to stand for re-election?

Yes	2998	76.46%
No	923	23.54%
Total number of responses	3921	

5. The government is considering using two voting systems to elect the second chamber: the single transferable vote (STV), in which voters can rank any or all candidates in order of preference; or open lists, in which voters put an "X" beside the candidate they most prefer. Both systems are broadly proportional. STV offers more choice and ensures that more votes will count. It is also better for independent candidates. However, the open list system is significantly simpler to vote in. Which system would you prefer:

Single Transferable Vote	3169	86.33%
Open Lists	502	13.67%
Total number of responses	3671	

6. The current House of Lords can delay government legislation by up to a year. However, the House of Lords rarely exercises this right, and has only used it four times in the past 60 years. Most experts agree that a wholly or mainly elected second chamber is likely to want to use this power more frequently. Should the powers of the second chamber be changed to reflect this?

No, the current rules should stay.	1734	44.61%
Yes, the current rules should change.	2153	55.39%
Total number of responses	3887	

7. Which of the following proposals to alter the second chamber's existing powers to delay legislation would you find acceptable (tick all that apply)?

Reduce the amount of time the second chamber can delay legislation by.	781	21.34%
Allow the House of Commons to overrule the second chamber if two-thirds of MPs vote to do so.	2085	56.98%
Only allow the House of Lords to block legislation on more than one occasion if two-thirds of its members vote to do so.	1388	37.93%
Require both chambers to set up a joint committee to work out a compromise if the second chamber rejects the legislation a second time.	2690	73.52%
Total number of responses	3659	