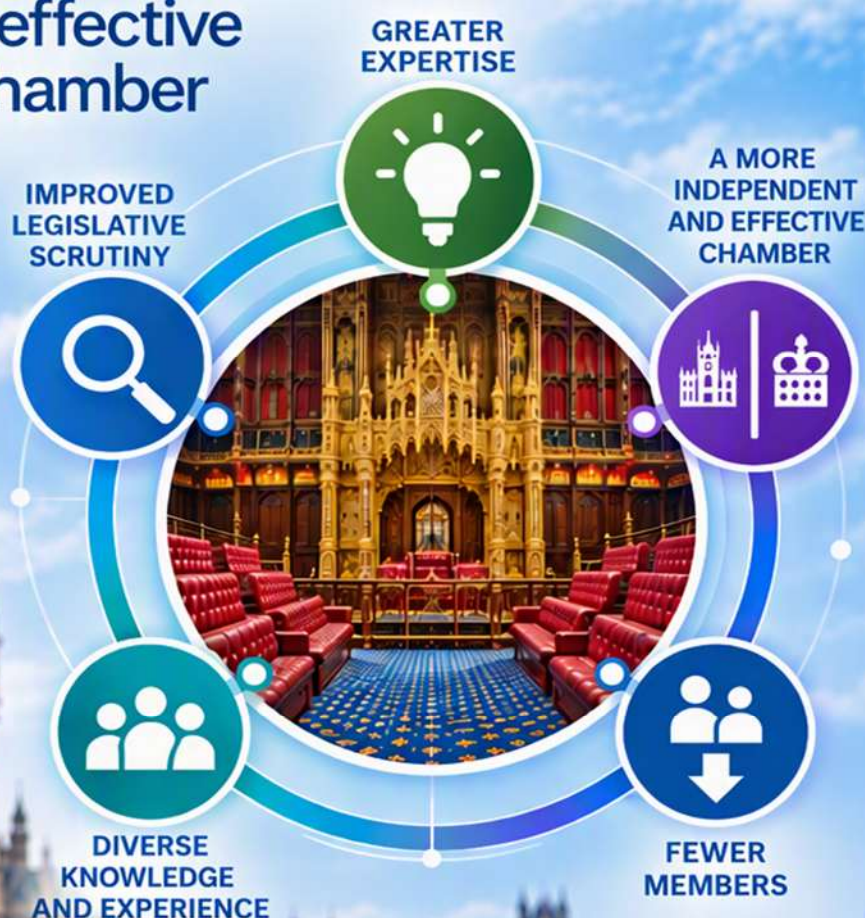


Reforming the House of Lords

How to build a more effective
and expert second chamber

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UNDERSTANDING
HOW TO REFORM
BRITAIN'S SECOND CHAMBER



Policy report: Reforming the House of Lords.

An introduction to the Lords and its problems:

The 1911 Parliament Act was enacted to confirm the House of Lords as the second revisionary chamber, with it only being granted delaying powers. This act was meant to permanently solve the ambiguity regarding the role of the House of Lords and its relationship to the Commons. Its role was later extended in the 1949 Parliament Act, where it was ruled that the House of Lords could only delay a bill for one year. The Salisbury convention was further added to ensure governments could not be prevented from enacting election manifesto pledges, again confirming the role of the Lords as a second revisory chamber.

However, people were still divided over the House of Lords' main purpose and who should sit in it. In the late 90s, New Labour tried to eliminate all hereditary peers. To ensure the reform would be enacted, this resulted in only 1/10th of peers being hereditary; at the time, 72 members. Again, this was meant to settle the issue of the House of Lords' role, yet who should sit in the Lords and exactly what each member should be doing is still debated. This is because we appear to be halfway between a hereditary and a democratic system. We still have appointments, with many Prime

Ministers appointing people whom they feel will favour them, resulting in a system of patronage by political favour. This is why senior figures from the House of Commons can often find themselves in the House of Lords after retiring from public life. This has opened allegations of corruption and may damage how the public perceives Parliament. Indeed, if an individual donates enough money to one of the main parties in the House of Commons they stand a good chance of being appointed to the House of Lords. Whilst not a hereditary system, this can be argued to be a system of patronage. This is because titles and the office that comes with them for life are given by the political head of state of the day and last for life. However, it is also in some ways democratic as those who we elect can appoint people who revise our laws. It is a typical British reform. Not a radical reform, but a slow gradual reform that has left us between two different systems. Therefore, we have a halfway house system that does not appear to be a desirable outcome.

The common excuse that is used for not attempting to complete the reform of the House of Lords is that none of the political parties can agree on what the end scenario should be. This paper argues that the most desirable end scenario is scrutiny by professionals, of whom are selected through elections or appointments from civil society. Civil society could be defined as leading civil servants, professional organisations, business groups, trade unions and leading national charities. On top of this, there could also be an allocated set amount of “political peers,” who would represent the government and opposition parties. This would help ensure the parties’ will

is reflected and that manifesto pledges are not broken. They would be there to advise other peers on what they feel the public's view would be on certain pieces of legislation. Therefore, they would help the second chamber to revise government policy in a way that would better reflect the public's attitudes. This would make for better law-making and representation within parliament.

Currently, the House of Lords has no mandate to do this, which unwisely limits its ability to revise certain pieces of legislation. A current example of this is Brexit, which will involve complex legal and parliamentary procedures that will need to be properly scrutinised. Yet, with a chamber that feels politically constrained and unable to properly scrutinise bills, many oversights may be made when passing Brexit into law. There are, of course, other bills the Lords feel they cannot scrutinise that have emerged since the last general election, meaning such action was not in any of the political parties' manifestos. A constrained revising chamber is not just a weak one; it is one that misses an opportunity to greatly improve on legislation that arises from day-to-day events.

Bills that have professional direction and function when applied to the real world will have more public support than bills that don't work when implemented. Therefore, the government has an incentive to enable better scrutiny of its legislation.

Making the second chamber elected with more revising powers could make the second chamber legitimate in its scrutiny. Further, peers would not need to fear a House of Commons backlash for simply doing their job, as

they would have their own mandate to revise legislation. Further, as their chamber's work will involve less party politics and more greatly involve improving legislation, the government may be less hostile to the revising chamber. This is because they would recognise it is in the government's interests to allow the second chamber to improve upon the quality of its work.

Therefore, reforming the House of Lords in this way would ensure that legislation is of a higher standard when passed into UK law. This is because more legislation would be properly scrutinised, overcoming the current problem Parliament has when passing laws - not being adequately scrutinised.

A summary of why reform is needed & the current problems with the House of Lords:

- Too many peers.
- Peers collecting salaries for little work.
- Unelected, undemocratic and being seen to stop "the will of the people."
- This results in limited scrutiny as the Lords fear a House of Commons backlash. It also results in scrutiny being viewed as illegitimate, further
- weakening the power and usefulness of scrutiny functions.
- Peerages for life and a feeling of no accountability for wrongdoing.
- There appears to be no legitimacy in the Lord's right to shape and make laws.

- Political patronage. This involves packing the House of Lords with party political supporters to reduce revising capabilities and increase the governing party's power in law-making. This is something that has led to a reduced quality of legislation.
- Becoming too nepotistic. The Lords are being packed with old political retirees and party officials, who gain favour by doing their House of Commons allies favours.
- Limited expertise in revising government legislation.

It is important to note that this only focuses on the negatives of the House of Lords and ignores the positives. One of the positives is that the House of Lords in recent years has acquired more expertise in the form of crossbench peers. These peers help to improve the quality of government legislation by applying their expertise when seeking to ensure legislation will work when enacted. Consequently, any reforms to the second chamber should not seek to eliminate these peers and will need to build on the value such people bring to legislation formation.

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How could this work?

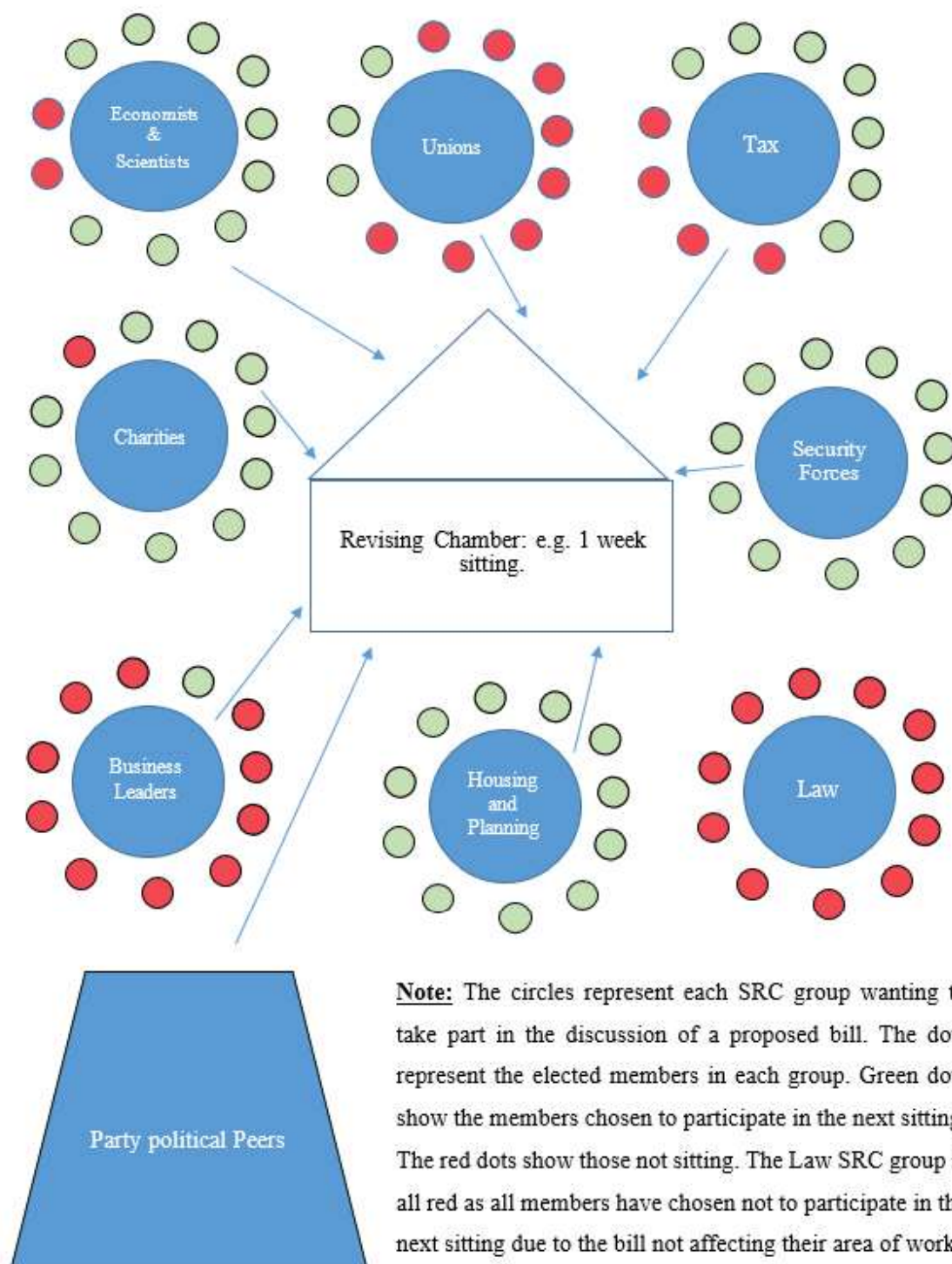


Figure 1: A diagram summarising who would sit in the revised House of Lords chamber.

Meeting Structure:

The revised system would aim to give all sectors of society a say over the bills that affect their sector. All proposed government bills could be listed in advance of a given sitting time, such as a period of one week - with members being notified one week in advance.

Once all the members are elected, revising peers can then be put into their respective groups. These groups could form specialist committees to directly scrutinise legislation when their sector is the main focus of government legislation. This committee system could work similarly to how the current committee system works. All these sectors will have their own Specialist Revising Peers committees (SRCs). These committees are quite simple. In advance of a meeting, they would look at bills proposed by the Commons and then discuss what they think of the bill. They would outline any amendments that could be made to improve the bill. The bill itself can be voted on in principle and there can be a record of what each relevant sector thinks of a bill before a vote in the revising chamber is held. Each sector that is directly affected by a particular bill can then nominate a select number of representatives to go to the revising chamber. Those who go would state what their sector wants from the bill, what they want to amend and if they intend to support the bill to go to its next stage. (Note: the process just outlined is summarised in Figure 1).

Of course, the peers nominated by their sector would be fully expected to represent the conclusions drawn up in their SRCs, therefore reflecting the overall opinion from experts in their relevant fields. These expert

committees should lead to amendments that are intended to improve the quality and feasibility of legislation.

Different sectors will understandably experience varying impacts from one particular bill. This poses the issue of who should be able to revise one bill and who should not. As a result, all representatives nominated to sit in the revising chamber for one bill should have an equal vote on it. The sectors logically most affected by one bill should be able to lead on its revision and start a discussion in the chamber. Ultimately, peers would have to listen to each other, respect each other's expertise and make judgments based on the most relevant expert group's advice.

After the reform of the House of Lords bill is passed, either elections will need to be arranged, or a Revising Peer Appointments Committee (RPAC) will need to be created. RPAC would be an independent civil service body that would nominate people from each sector who have recognised expertise within a valued field. The advantage of the nomination system is that it would avoid competing mandates, thus producing less friction between the revising chamber and the government. Therefore, this would reduce the chance of the two houses undermining each other and producing gridlock. Yet, this does risk democratic deficits. Consequently, elections may need to be held, even if they yield a low turnout. If appointments are enacted through elections, the way to conduct these elections will depend on the expertise sought and the field in which these people are recruited.

Let us take some examples. Note: the following groups are not a complete list and only exist as examples. More sectors could be added to fully represent all the professional bodies across the UK.

Armed Forces & Security:

Defending the country from threats is the first job of any government. Therefore, having experienced people from the armed forces and security services could provide the government with invaluable information when seeking to pass legislation that is designed to keep people safe. These elections could work by people standing for election and members of the armed forces could then select from a field of approved candidates by army leaders. Alternatively, it has often been said that many valuable candidates would not put themselves forward in an election. Therefore, army leaders could nominate candidates they feel best represent the views and concerns of the army. Therefore, the army could decide how best to proceed in putting peers into the new revising chamber. Then RPAC would nominate the best candidates from a provided list. The people nominated would then join the security forces meetings and they could discuss upcoming bills that they feel will affect the army. The security services, which would involve the intelligence agencies and secret services, would also be able to nominate experienced representatives. These people could be chosen from those coming to the end of their careers to ensure good expertise is selected. They would then be able to give their input into bills that propose cracking down on terrorist activities, which have often been controversial and have been accused of being rushed through parliament.

Finally, this group could also comprise of representatives from the emergency services. These services could again either nominate or elect people. This would also give the sector a say over bills that they feel will heavily impact their services. More services can be added to these groups if needed and these groups can be adaptable in terms of which expertise is needed, which can be determined by the peers themselves. This group as it currently stands would be sufficient to scrutinise a wide range of bills that could have a broad spectrum of effects on different services.

Business Leaders:

UK businesses can be hard to define due to the globalisation of business. Ideally, it would have to be defined as business leaders who first became successful in the UK and who have gone on to build global brands, such as Lord Sugar. It could also be limited to UK citizenship. It could also be defined as businesses that are primarily based in the UK and are registered for taxation purposes within the UK. Candidates could be nominated through a UK-recognised federation of businesses or a chamber of commerce. Once these nationally recognised institutions have been formed, they could appeal to business leaders from small to large-scale businesses to come forward and stand for election. Alternatively, RPAC could choose the best candidates from a shortlist provided by a group representing businesses across the UK. There could be a quota to ensure that a guaranteed number of small and large business representatives are selected, 50% each perhaps. Once the candidates have been selected, they can again form their own SRC group and start to discuss what they feel

business interests are and how this fits in with current government proposals. They can then start to read bills and have votes on suggested amendments. Governments could also give businesses greater direction over proposed budgets, which may help shape policy-making in a way that will support businesses better, possibly allowing for future economic success.

Civil Servants:

Experience from long-serving civil servants can be a vital aspect in making the best laws possible. They often have unrivalled knowledge in making laws regarding specific policy areas and know how to make bills clearer and more workable. Therefore, it is logical that there would be a group designated to civil servants, who again are perhaps coming to the end of their careers and are looking to continue public service. This could again work through nominations from leading civil servants across the country or through elections, where candidates could be shortlisted by leading civil servants. All members within the civil service could then vote on who they think will be most able to improve law-making standards. Conversely, RPAC could choose from a final shortlist. The group could then meet to discuss the proposed bills for the next week's sitting. The civil servants could then discuss how applicable to the real world the proposed government legislation would be and its likely consequences. After this, they could give their view on the suggested amendments. All decisions would be voted on and only decided by a majority of members in the group, like in all SRC meetings. Nominations of civil servants to go to the revising chamber for

the next sitting could also be given. Members nominated would explain the amendments the group has suggested and why the revising chamber should support them. The nominated peers would then go back to the group meeting to explain the outcome and possible courses of action if the bill needs to be revised again. This would provide the expertise civil servants can provide in law-making, whilst making the second chamber more democratic than its current form.

Charities:

Charities have often stated that they find it frustrating that they are not properly consulted on legislation that they believe will affect their ability to function. Again, the same approach can be taken. The UK government could draw up a list of charities that could nominate outstanding workers and volunteers who have a great deal of experience in the sector. People who work for these charities could then vote for a candidate they feel would best represent the concerns charities have, along with the current laws that govern how they operate. Alternatively, RPAC could select who they feel are the best candidates from such a shortlist. Once they have elected a group of people, they could form an SRC. This group could discuss individual bills on a week-by-week sitting basis. This would give them the power to shape bills that affect their work, whilst also providing an opportunity to have influence over the government on proposed changes in regulations that affect their work.

Housing & Planning:

If housebuilding is to be a government priority in the coming years, it would make sense to have specialists who understand the implications of suggested housing reforms in the revising chamber. Such specialists would ensure that government legislation on reforming the planning laws would work as intended. It will also mean legislation will be more likely to deliver the good quality housing we all want to see. Candidate nominations in elections could come from either house-building businesses that could be elected through a business federation, or people who have had many years of experience in housing and planning departments. If elections are not feasible, then RPAC could select the strongest candidates from such a shortlist. These two groups could again have a 50/50 split to ensure both types of representatives get to contribute to revising government legislation. This could produce better legislation that may encourage more house-building, whilst also maintaining good housing standards.

Law and Justice:

Legislation passed will become law. Therefore, having legal professionals scrutinise legislation to ensure there are no loopholes or contradictions in other laws could help legislation function better. The legal profession could nominate top legal experts coming to the end of their career or legal bodies could have elections where people who have extensive legal experience could stand for election. If elections are not seen to be the best method, RPAC could select from a shortlist of candidates. Once all members are elected, they will form an SRC group and arrange meetings with all

members. They could then discuss proposed law changes and determine the extent to which they feel the changes will work once implemented. If they feel change does not fully meet these criteria then a member can propose an amendment and this could then be brought to the revising chamber. They could also help revise legislation to ensure the government's legislation will not be subject to extensive legal challenges. The legal representatives could then explain their suggested amendments and their peers could either support their amendment or reject it based on the arguments given.

Unions:

If businesses are represented within this new revising chamber then there would also need to be trade union representation. The Trade unions' role could be to ensure that public sector workers are represented and that workers' rights are promoted when bills are passed. Trade unions could have an agreement amongst themselves that different unions would have a designated number of representatives that would become revising peers. This could be divided according to the size of a union's membership and the sectors a union represents. Once the trade unions agree on representative numbers, they could hold elections. If elections within trade unions are not possible, RPAC could select from a shortlist of candidates. Once the unions have filled all their elected positions, they could then form their own SRC group that would scrutinise pieces of legislation that are deemed to directly affect their workforces. They can look at this legislation when it comes to the revising chamber and then decide to let it pass or suggest

amendments. Once they have voted on actions they propose to take, they could then nominate peers to go to the revising chamber to put forward the group's cases. The revising chamber could then decide to accept or reject a revision based on the arguments put forward. This body would help to ensure legislation would protect the current system of worker rights that exists in the UK.

Scientists:

One of the most obvious groups that should have a place within a revising chamber is scientists, especially those with long distinguished careers within specific scientific sectors. Various scientific bodies could elect a representative to help the government form better legislation. Alternatively, RPAC could select the best candidates from a designated shortlist. Such a scientific body could be the British Medical Association, which could help the government implement policies to improve public health. Other elected science professionals could help the government decide which technologies are best to invest in, which would help improve long-term investment strategies. One such influence could be when peers could instruct the government on what future energy technologies should be invested in, such as the decision to invest in hydrogen technologies. Biologists could also help formulate regulations for the environment, such as when efforts to protect bee populations are made. This group of peers could advise the revising chamber using scientific evidence-based advice on a wide range of government policies. The revising chamber could then decide what to do based on the advice given. This structure of revising government legislation

would help to improve longer-term strategies in government policymaking, improve upon current UK regulations and seek to improve future proposed legislation. It will do this by making the policymaking process more based around informed discussions.

Political Peers:

Political peers could be there to represent the view of political parties on specific bills and amendments to proposed legislation. They could be selected by party leaders or the party group (parties can choose their preference). Each party that has more than 10% of MPs would get to have political peers. The government and main opposition party would have similar numbers of peers, with smaller parties having a smaller but notable presence. For example, Labour and Conservative could have ten each, whilst smaller parties could have a couple each. Nominations ideally would be a mixture of long-serving frontbench MPs, leading party figures and one long-serving backbench MP. If a party lost enough MPs to become a smaller party then they would lose political peers appointed in the previous parliament, thus ensuring no political appointment would last for life.

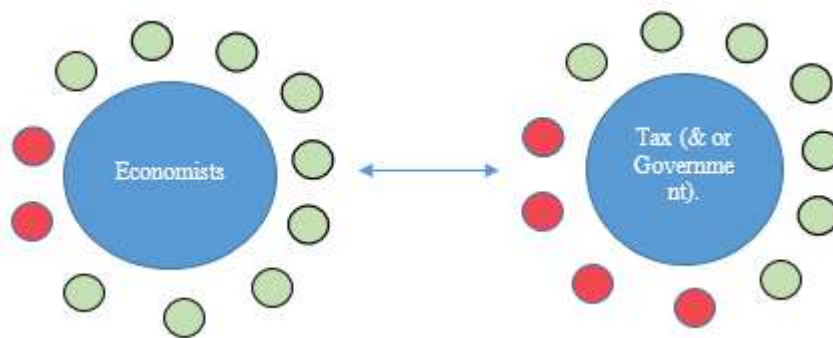
Once all the peer positions have been filled, they can again form their party groups and sit in the revising chamber all year round. It is important to note these peers will be there mainly to express their party's views, what their party's main objectives are and how their party feels about suggested amendments. The relatively small size of parties' presence in the new revising chamber compared to all the other peer groups should be easily recognisable. This would be so as to ensure that a House of Commons

majority would not continue to greatly affect legislative outcomes in the second chamber. The House of Commons would of course not have the powers to increase the number of political peers, so to avoid similar problems we now have of an ever-growing second chamber. Changes in peer numbers could only be achieved with a majority of peers agreeing to an increase or a majority of peers agreeing that a new sector is required to improve specific legislation.

Other groups:

Other groups not mentioned so far could also have peers. Again, either through an election process or through an independent nomination body (RPAC). So far, only a brief set of possible groups has been laid out as an example of how this new revising chamber could function. Additional possible groups could be the following (plus more that are not mentioned):

- Computer science and technology groups.
- Social sciences: economists, sociologists, political scientists and social scientists.
- Leading academics from the university sectors.
- Leading professionals from the vocational sector.
- Leaders from the creative arts sectors.
- Leaders from the historical, heritage and tourism sectors.
- Media sectors.

Specialist Joint Meetings:

Specialist meetings between peers could be arranged to help provide expertise in tackling particular problems. Specifically, they could advise the government to help form better legislation that can more effectively tackle problems the government seeks to address. For example, as powers return from the EU on farming, experts within this field could help the government form new legislation to tackle problems farming may experience post-Brexit. Also, this could help address the loss of expertise from our EU membership in areas like farming and fishing. Further, different areas of expertise could join forces to help fill gaps in legislation, so as to ensure it is of the highest quality before being implemented. This could be done on an ad-hoc basis that could become regular through agreed necessity. For example, a group of economists may wish to ensure that any attempts to close tax loopholes within a government budget will be implemented as fully intended. If this group does not fully understand whether the proposed plans will deliver what is intended, they could ask for expert assistance. In this instance, they could ask for a one-off meeting with tax specialists in order to gather more information on what amendments could ensure the intended result of this bill is reached. If the collaboration

between peer groups is agreed to have reached a more positive outcome than would have otherwise been secured, the two different groups could arrange regular meetings (if wanted). This function would allow for greater collaboration between peers and other experts, thus enabling a higher quality of scrutiny over government legislation. In theory, this should improve the quality of legislation. Again, this would be free from government interference and could allow for legitimate scrutiny of legislation without being fearful of House of Commons rebukes. This would probably result in better legislation that would produce the best result for all people and groups within the UK.

Nominating Peers for sitting time:

Not all peers would sit in the revising chamber at one given time. This will avoid the over-capacity issue that the House of Lords currently faces. There would still be a large number of peers who could bring a broad range of expertise, experience, skills and knowledge. Yet, there would be a limit to the number of peers who can sit and vote at one time. The way this would work is that the revising chamber organiser would decide how long the sitting would be and how many peers could attend. Then, the SRCs would nominate a designated number of their members to sit in the Lords during this one-week sitting time. Those nominated would represent the group's views on bills and propose amendments that their group had voted for. These members would then return to their group and be accountable to the group for their conduct and the outcomes of discussions. The group could therefore decide who best represents them and send peers who will best

represent the sector. Over time, this would theoretically give the best representation to people who work in these sectors.

What do the “vacant” Peers do?

So far, it may have been noticed that there would potentially be a lot of elected revising peers who do not have that much work. The peers who are not nominated for the defined sitting will seemingly not have that much to do. However, peers will do far more than just revise legislation and vote. The peers who are not nominated for the sitting will have to carry out other functions, such as providing a link between the public and the revising chamber. This will help ensure that any concerns raised by organisations and members of the public are responded to as quickly as possible. It will also help to make the revising chamber more reflective of the wider concerns of the public.

Vitality, the flexibility of not having to sit in the chamber on most working days all year round will allow people to balance their professional lives with their commitment to public service. This will mean that people will not have to quit highly successful careers to be a revising peer. Importantly, this will attract more high-quality candidates and allow them to make the contribution they have the time to make and that the country can most benefit from. Further, this flexibility will allow for a rolling appointment process, where as one peer steps down, another can quickly take their place. Moreover, a system could be devised where not all peers are elected or nominated in one day, like MPs in general elections. Instead, peers could serve a set term, and they could be gradually replaced on a rolling basis.

This will ensure that experienced peers are in place after a general election is held. This will allow experienced people to support a new, potentially inexperienced government in their first difficult years in government. Potentially, this could help increase government stability.

The Rules in SRC meetings:

Decisions over positions on bills and amendments to them must be made by a majority of peers within a group.

Nominations must be based on self-nomination. After nominations, votes can take place to decide who will sit in the revising chamber for the designated sitting.

- All members are to be heard and all amendments are to be considered fairly.
- Meetings are to be held at the best possible time for the majority of members to ensure a broad range of people can participate in meetings.
- Any lobbying from outside organisations must be noted at these meetings, with all people and organisations involved being noted.
- Attendance and votes on amendments must be recorded and transparent.

The revising chamber and its procedures

The revising chamber's procedures will mostly reflect exactly how the House of Lords currently works. Some of the older more archaic rules might go, such as referring to everyone as Lords, but broadly the revising chamber

will operate as the House of Lords functions today. The biggest difference will be that the revising chamber will not spend so much time speaking about what it can't do due to fears of repercussions from the Commons. This is because it will be free from the Commons with its own democratic mandate.

Reforming the House of Lords could also be an ideal opportunity to tackle poor practices in parliament and improve the public's perceptions of it. To take advantage of this opportunity, clear rules would be needed to dismiss those who abuse their power and are unfit for parliament. Therefore, a clear set of rules on what actions would result in someone being dismissed from the revising chamber would be needed.

Misconduct and grounds for dismissal:

Dismissal from positions could result from the following misconduct:

- Sexual harassment and (or) assault (once found guilty after an independent organisation has conducted a full investigation).
- Threatened or actual violence against another peer.
- Intimidation of peers and using such behaviour to force a peer's vote (both verbal and cyber methods).
- Convictions of crime whilst in office, especially crime that compromises their professional integrity and ability to independently carry out a revising peer's duties. Failure to disclose historical convictions that compromise a peer's integrity would also count.
- Multiple examples of not declaring conflicts of interest.

- Not declaring lobbying interests and activity. Also, not declaring meetings they have with professional bodies that seek to influence legislation.
- Profiting from decisions that have not been declared would again be grounds for dismissal, especially when avoiding declaring their position was proven.
- Political conflicts of interest not declared would be grounds for dismissal to avoid corruption. If a peer is found to have a defined political interest that was not disclosed before the election this could also be grounds for dismissal.
- Not declaring political membership of a political party or associational body (ideally peers would not be party members). Peers would pledge not to be political.
- Fraud and corruption, such as taking money for questions or amendments on bills. This would be designed to avoid the so-called cash for questions that may have taken place in previous parliaments.
- Ignoring carrying out a peer's duties. Such as unexplained poor attendance at meetings that they have agreed to attend.

Overall, what would this system look like?

Overall, the system outlined in this document would be more of an informed aristocracy than a completely democratic system. It would keep the current expertise that exists in the House of Lords that does such good work and would seek to expand upon it. There would be fewer representatives from political parties and the parties would be there to

communicate the government's position, rather than being there to try and force through legislation.

Such a revising chamber should be able to propose improvements to current systems. Then such proposals could be accepted or rejected by the elected commons chamber. Such proposals could focus on dealing with policy areas often overlooked by governments and problems not addressed in the government's elected manifesto. This could help to increase action on issues that often go unnoticed in parliamentary cycles. The function of suggesting improvements to current systems and creating proposed legislation in overlooked areas would be designed to complement the House of Commons rather than confront it.

Moreover, the revising should not be there to mirror the House of Commons and it should not be a party-political controlled house. This is because it would risk just rubber-stamping items the House of Commons proposes, rather than being there to ensure legislation is of the highest quality when passed. It would also avoid the risk of creating competing mandates that produce gridlock. Instead, the revising chamber should primarily exist to create a check and balance mechanism that is designed to bind the Commons to its commitments. The commitments would be the manifestos that the people voted for. This suggested reform achieves this.

It should also be there to identify possible loopholes in legislation and to ensure legislation will be workable once enacted. Again, such a check and balance system might allow legislation to work better in practice and work

as intended. This could help the government fulfil its democratic mandate rather than hinder it.

Overall, this proposed new revising chamber would look like an assistant to the House of Commons; it would mainly be there to suggest improvements to current systems. It would not make excessive amendments and would only seek to make essential changes to improve upon legislation that has democratic legitimacy from the Commons. It would also partially exist to create legislation that would fill in legal loopholes and gaps in areas often overlooked by governments. Vitally, it would exist to provide checks and balances that would result in higher legislation quality and consequently, better outcomes for all.