When the House of Lords returns from recess in October, they will begin to welcome the 30 new peers announced at the beginning of August, compounding fears of a ballooning house. Among the Bills to be scrutinised are three PMBs suggesting limited and/or discriminatory reform of the upper chamber. This blog post considers these Bills, the problem of an increasingly large house and suggests a small amendment to the more likely Bills which would secure a full but evolutionary reform which meets the stated aims of most sides and concludes what the House of Lords Act 1999 began.

Halsbury’s Law Exchange, a legal think tank, hosted by LexisNexis aimed to communicate ideas on reform or legal direction to decision makers and the legal sector and promote debate through papers, reports, events and media pieces. Its blog ran 2010-2017 and is now available via archive.org.
House of Lords Reform - time for evolution rather than revolution?

When the House of Lords returns from recess in October, they will begin to welcome the 30 new peers announced at the beginning of August, including such diverse figures as paralympian Chris Holmes, racism campaigner Doreen Lawrence and Ministry of Sound co-founder James Palumbo. These 30 new peers (14 Conservative, 10 Liberal Democrats, 5 Labour and one Green) will see the Conservatives again become the biggest bloc (with 222 peers, one ahead of Labour) and take the number of currently eligible sitting peers to 783. While such a size led to many comments about the ballooning size of the House (such as ‘New faces push the supersized House of Lords towards 1,000’ The Times August 2, 2013), this figure - which excludes those on leave of absence and those ineligible due to offices held - is actually lower than the figures as at March 2011 and March 2012. However, the annual reports of the House do show average attendance has increased by over a third in the last decade (from the mid-300s to the high 400s) and reflecting changing party balance in the House of Commons through creations is undoubtedly set to increase the size of the House of Lords (particularly if the parties fortunes ebb and flow; on this point see, e.g., Michael White (Guardian, 17/5/2010) and the Electoral Reform Society 2013 report ‘The Super-Sized Second Chamber’). Thus among the Bills set to be scrutinised in the remainder of this session are no fewer than three House of Lords Reform Private Members’ Bills (PMBs) which seek to restrict the size of the House, Nick Clegg’s revolutionary - and much criticised - reform having been abandoned last year (at least until the next election).

Recent past

The 1999 reform of the House of Lords, which saw the ending of the right of most hereditary peers to sit, was only ever intended to be the first stage. Under a compromise amendment, 92 hereditary peers remained to act as an encouragement to the Labour government to come up with a second stage that could garner wide support (with the original intention that that would happen within five years). Their having failed to do so, Nick Clegg sought reform as part of the coalition government and, following post-proposal consultation and a critical report by members of the joint committee on House of Lords reform, proposed a hybrid house of 450 members with 80% elected from regional constituencies (but not the same as the MEP regions) and 20% appointed to help maintain an independent element. This was, in the view of former Commons Speaker Baroness Boothroyd, not so much reform of the House of Lords as its abolition and replacement (albeit with a body with unchanged powers despite its arguably greater legitimacy). Opposition from Conservative backbenchers and Labour’s refusal to support a limit on debating time, and wider-insistence that much needed to be scrutinised and amended, saw him concede defeat and apparently refuse to adopt more modest reform proposals. His liberal colleague Lord Steel had introduced a bill during four sessions of Parliament proposing, inter alia, to reform leave of absence, allow retirement, and abolish the hereditary peer by-elections so that their number would in time dwindle. This had gained support in the Lords but ran out of time before the Commons in spring 2012.
This year’s Bills

While the details of the Commons PMB sponsored by Dan Byles (HC Bill 15) are not yet available, it is likely to be not dissimilar to Lord Steel’s attempts and the Lords PMB sponsored by Baroness Hayman (HL Bill 23) is very much based on the Steel Bills. As Dan Byles came fifth in the members’ ballot for PMBs it stands a reasonable chance of at least being considered, as does Baroness Hayman’s based on past progress within the Lords of Lord Steel’s last Bill (Christopher Chope’s Commons PMB (HC Bill 67), which sets a 650 member cap from 2015 with voluntary retirement and compulsory retirement for the longest-serving peers should the number be greater than 650, would appear to stand even less chance of becoming law). Were the government to support either the Byles or Hayman Bill, Nick Clegg could, by making a slight tweak, achieve his aim of injecting the democratic principle within the Upper House while retaining many of the aspects that those opposed to his Bill wanted to retain.

A full and evolutionary solution

As the 1999 reforms were passed following a small amendment tabled by Lord Weatherill, to allow 10% of the parties’ hereditary peers to remain (plus a further 15 to act as office holders and two further royal office holders), a small amendment could be added to the current Bills which would provide for the regulation of the size of the House and that the parties’ representation should be based on past election results. Such a system of indirect election - as detailed in The House of Lords Reform White Paper and draft Bill 2011 and a simpler alternative (Amicus Curiae 88 p. 2-4) - could see 20% of the House reserved for cross-benchers and the party balance changing in line with election results (rather than adding yet another direct ballot). As with the 1999 reduction, the members of the House (or subsequently all party peers or crossbench peers as with the hereditary by-elections) could vote among themselves should the number of party peers be greater than their allocation at each reset point (e.g. each new Parliament). Given the small changes likely each election, this evolutionary change would not unduly politicise the House but would solve the problem of a growing house more fully than the PMBs allow, while meeting the government’s perceived need for a form of democracy. Members of the House are best placed to know the contributions of fellow members and such a mechanism would be less wasteful or unfair than an arbitrary age or service-length retirement. Peerages could still be made each year to maintain balance, allow for new blood (and appointment as ministers) or to honour individuals (perhaps subject to a statutory limit). The size of the House could be open to negotiation as could the choice of election (or elections) which would form the base for the numbers. Such indirect election was being considered in parliamentary circles before Nick Clegg drew a line and postponed any further consideration until after the next election. There is no ideal solution which fully satisfies all sides but the opportunity is now clearly there for the government to show bold leadership, to take advantage of these bills and to seize on a compromise of this sort which addresses most of the expressed concerns, regarding size, role, democracy and type, diversity and quality of membership, and which could see final reform achieved within this Parliament.