



Dods briefing: Lords procedure - Process and likely barriers for minority government



Background and Overview

With a reduced number of Conservative MPs after losing her outright majority in the Commons, Theresa May now faces the challenge of implementing the legislative programme outlined in the Queen's Speech in June 2017.

She will attempt to do this over the course of a two year long parliament, uninterrupted by another legislative programme in 2018. Alongside their domestic agenda, the Government outlined several Bills delivering on both aspects of their party manifesto as well as the crucial processes associated with Brexit, on which negotiations have begun.

Following talks with the DUP for a quid pro quo, the Prime Minister now faces the challenge of delivering her programme of government with a slim working majority, facing potential rebels from her own party, the Opposition, and potentially from within the House of Lords.

The unelected Upper House had come under renewed consideration in recent times, not lastly on the eve of the Article 50 vote, where several Opposition party peers threatened to “block” Brexit. Under former Prime Minister David Cameron during the coalition government, there were attempts on three occasions to block a government Bill. A review was commissioned to consider the power of the Lords, as Cameron was worried that conventional bills were facing sabotage in the Lords. This move led to increasing discussions of more veiled policy change being implemented via secondary legislation.



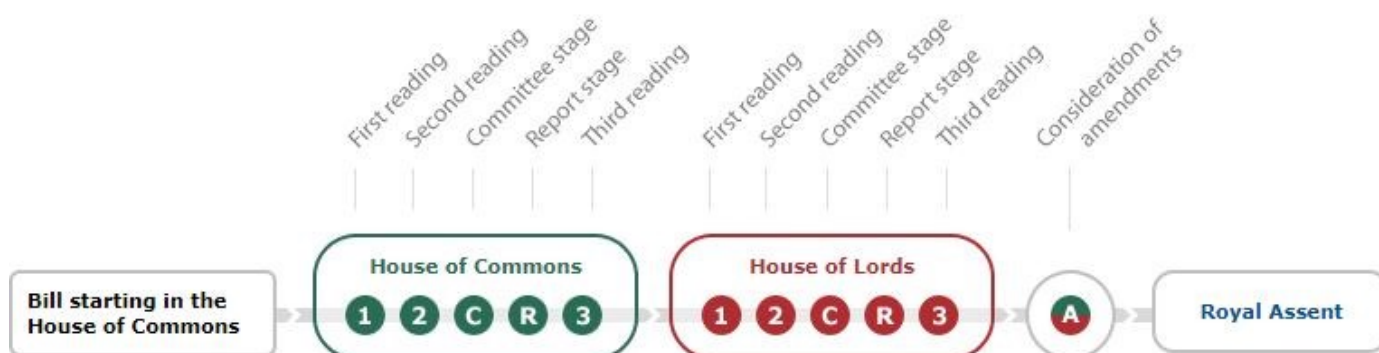
Now, with the stability of the Government standing on a knife's edge, we consider the powers of the Lords, the process by which they scrutinise—or have the ability to veto primary legislation—and how pertinent this is in light of a hung Parliament.

The briefing below outlines the process, relevant convention and procedure, and considers which legislation might be at risk from the Opposition, both in the Commons and – given their numerical advantage – in the Lords. It also provides a useful overview of next steps and the key people involved.

Procedure and make up of the Lords

When do the Lords get involved in policy making?

The House of Lords is involved in law making, as well as in changing existing laws. For the purposes of this briefing, we will consider a Bill starting in the House of Commons, focused on government Bills. These would start their passage there, before being presented to the Lords for scrutiny and approval.



During committee stage, amendments are considered. As in the Commons, the members of a Bill Committee go through each clause and vote on amendments. During Report Stage further amendments tabled by the whole House are considered and voted on, if need be. After Third Reading, the Bill is passed back to the Commons, for consideration of Lords amendments.

Both Houses must agree on the exact wording of the Bill. This process can go back and forth, called “Ping Pong”.

In exceptional cases, when the two Houses do not reach agreement, the Bill falls. If certain conditions are met, vitally the Commons can use the Parliament Act to pass the Bill, without the consent of the Lords, in the following session.

The Parliament Act 1911, was introduced to remove the power of the Lords to veto a Bill, except Bills to extend the lifetime of a Parliament. The Lords could delay a Bill by up to two years within one Parliament, by blocking the passage of laws, voting them down altogether or by repeatedly [insisting on its amendments](#). However, the elected House of Commons has “[primacy](#)” as the official Cabinet Manual puts it.

Convention further dictates that the Commons has “financial privilege”, so Bills that do not seek to raise money through taxes or spend public money can be held up by the Lords if or about a year but not be vetoed. The Commons can reintroduce them in the following session and pass them without the consent of the Lords.

Another convention is that Governments should get their business “in reasonable time”. To ensure Government Bills can get through the Lords when the Government has no majority in the Lords (as is the case—see below), the Salisbury Convention was introduced (p3) and in practice Lords do not vote down Government Bills mentioned in an election manifesto.



Procedure and make up of the Lords

What is the make-up of the Lords?

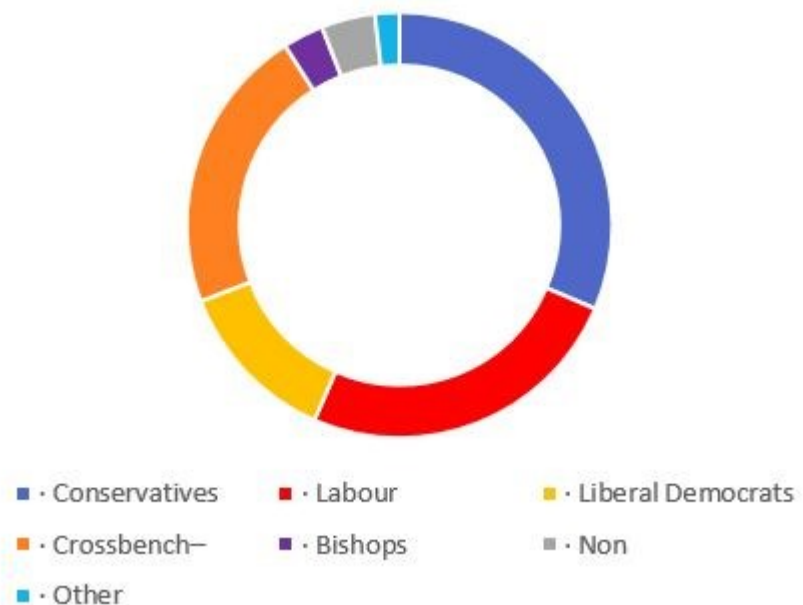
The House of Lords currently holds the title of being the second largest legislative body in the world after the National People's Congress of China with 808 members. However, unlike its Chinese counterpart the Government does not have an automatic majority, instead the Conservatives (254) have had to realise that while they are the largest party in the Lords, they lose that advantage if Labour (203) and the Liberal Democrats (102) vote together.

Under the coalition this was never a realistic scenario. However since 2015, the Government has had to come to terms with this new reality, one that will be ever more present now they only have a minority government in the Commons.

If a Lib-Lab pact does emerge in the Lords, the Government will have to seek votes from crossbench peers who by their nature are independent. This will put them in the unusual position of being king-makers and will greatly increase their influence over policy.

- Conservatives -254
- Labour – 203
- Liberal Democrats – 102
- Crossbench – 176
- Bishops – 25
- Non-Affiliated – 33
- Other -15

Make up of the House of Lords



Salisbury Convention

What is the Salisbury Convention?

The Salisbury-Addison Convention (often referred to as just the Salisbury Convention) was established in 1945 following the election of Clement Attlee and his post-war Labour government. The convention held that the House of Lords should not get in the way of the implementation of government manifesto commitments for which the Government had a “mandate” to implement from the electorate.



The original rationale behind the convention was to counteract the dominance of Conservative hereditary peers, who at the time had a majority in the Lords and the power to defeat any government legislation. The then Conservative Leader in the Lords felt it was “constitutionally wrong” for an unelected chamber to hold up the will of the electorate and thus agreed not to block any Labour manifesto commitment.

In practice, the convention obliges the Lords to grant manifesto bills a second reading and not to table wrecking amendments which might otherwise alter the bill’s intent.

Implications in a hung parliament?

The 2017 election has [raised the question](#) of the convention again, and if it applies in cases of a minority government that has failed to secure an electoral mandate for its manifesto.

If the democratic principle underpinning the convention is that the Lords must pass Government manifesto commitments as they have received a mandate from the electorate, then as [Professor Elliot from Cambridge University](#) argues “constitutional principle does not require Bills implementing Conservative manifesto commitments to be singled out for the sort of special treatment accorded under the Salisbury Convention” as the party failed to secure the backing of a majority of the electorate.

However, while there may be a constitutional argument that a minority Government is not subject to the convention, it fails to take account of the political reality— one in which the Lords would have to think very carefully before trying to block legislation which had been passed by an elected chamber, and the ramifications of being at odds with the Commons.

Ultimately the convention is based on what the political community thinks, and since the election opinion has been split. Long opposed to the principle, the Liberal Democrats have [indicated](#) that the convention does not apply to confidence and supply arrangements and they will scrutinise each bill on its merits and if warranted oppose them.

The main attention though will be on Labour, who have the numbers to block Government legislation if they vote with the Lib Dems and the Government fail to persuade a significant number of crossbench peers.

Labour’s leader in the Lords Baroness Smith has [downplayed](#) the chance of a standoff in the Lords by making clear that Labour peers will continue to recognise the primacy of the Commons both in terms of manifesto bills and non manifesto bills. While they may ask the Commons to “think again” they would not impose the will of an unelected chamber on the Commons. It would therefore seem that while the Salisbury Convention is still up for discussion amongst academics, it will not be a major thorn in the Government’s side.

Legislation at risk?

Commons opposition to Queen's Speech

In regard to the programme presented at the Queen's Speech, the Commons opposition parties have already started tabling debate amendments or identifying those provisions in the Speech that they will seek to vote down. The opposition parties only need seven MPs to change sides to overturn the Government's 13-strong working majority which could trigger a no confidence motion in Parliament. The main vote to approve the Queen Speech is set for Thursday 30 June.

Indeed, ahead of the Speech itself, Labour indicated they would be tabling amendments on school cuts, preserving the winter fuel allowance, and scrapping the bedroom tax. Other areas where Labour suggested they had agreement with some Conservative backbenchers were emergency services and public service numbers.

In regard to Brexit, several MPs from Theresa May's own party rejected the indication made earlier in the year and since then, that it was a possibility to walk away from the Brexit negotiations with no deal. Indeed, recent reports revealed up to 30 Conservatives to be willing to vote with Labour to prevent and end with no outcome to the negotiations. However it remains unclear just how these political concerns would manifest in the division lobby.

Turning to the Conservatives' domestic legislation, one example where opposition parties are seeking change will be seen through the Draft Tenant Fees Bill where Labour are reportedly keen to implement an amendment following the Grenfell Tower atrocity, which would allow tenants to demand improved fire protection measures.



Which parts of legislation are likely to be "frustrated" by the Lords ?

Although the threat of defeat in the House of Commons attracts significant attention, Government is defeated quite regularly in the Lords. In the past opposition parties have voted cohesively leading to a government defeat, often with the Liberal Democrats holding the balance of power.

As outlined above, Lord Thomas of Gresford, the LibDem Shadow Attorney General has [already declared](#) any Conservative-DUP Bills would not be considered under the Salisbury Convention and that his party's peers had the prerogative to vote them down.

The Queen's Speech unveiled eight Brexit related Bills, with the Prime Minister stating: "We will do what is in the national interest, and we will work with anyone in any party who is prepared to do the same."

Labour have already indicated their strong disappointment that protections for workers' rights had not featured prominently in the outlined of the Brexit Bills.



Further reports suggest that the Lib Dems declared their 102 peers in the House of Lords would not honour the long-standing Salisbury Convention and would fight Brexit "every step of the way".

They have been particularly vocal on an open Irish border and would like the Government commit to spending some of the £350m the Vote Leave campaign had promised, on the NHS.

Legislation at risk?

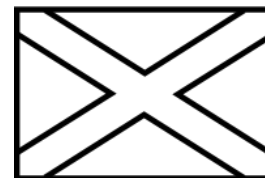
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Repeal Bill

Nicola Sturgeon and other MSPs in Scotland will have the ability to give consent on whether to allow the Repeal Bill to apply to Scotland, via a legislative consent motion, which could see the SNP-dominated chamber vote down key Bills that applied to Scotland.

Media reports have quoted civil servants expressing they felt a headache coming at the prospect of the challenges in devolved assemblies in regard to the Repeal Bill.

Baroness Smith, Leader of the Opposition in the Lords is among those suggesting problems for the Government could arise if it chose to introduce inappropriate Henry VIII powers into the Repeal Bill as a means for expediting a raft of secondary legislation at some future point. This is one of the most controversial aspects of the Bill.



Can the Government veto the Lords?

When it comes to the Government trying to exert influence over the Lords, its main weapon is that of legitimacy. While the Lords can make noise about a bill and at times delay measures and ask the Commons to reconsider, it is fully aware of the perception of a unelected chamber forcing its will on the democratic House of Commons.



When the Lords has tried to flex its muscles such as with the Article 50 vote, the Government threatened to flood the chamber with "[sunset](#)" [peers](#) to ensure the bill was approved.

The Lords is also aware that if they rock the boat too much, the Government may turn-round and mention the scary word of "reform" which could come in the form of either reducing the number of Peers or reforming the way they are appointed so as to favour the Government.

As a final course of action, the Commons can use the Parliament Act to force through legislation which has been repeatedly held up by the Lords, though it has rarely come to this and has only been used seven times since its creation in 1911.

Next Steps



Estimate legislative timetable and key votes

In our **Queen Speech summary** <http://bit.ly/2rV3V32> we have considered a projected legislative timetables alongside potential political challenges and opposition amendments the Bills may face as they goes through each House.

Debates in both Houses are still ongoing following the Queen's Speech last Wednesday and will continue until Thursday 29 June.

On the penultimate day of debate, an Opposition amendment is considered and voted upon.

- ◆ On the final day of debate, a further Opposition amendment is considered, although, time permitting, the Speaker has the power to permit a vote on two further amendments.
- ◆ A vote on the final motion will therefore take place on 29 June – this is the vote that May needs to pass in order to form a Government.

Themed debates

Following the speech, each House continues the debate over the planned legislative programme for several days, looking at different subject areas. The first day's debate is general in character and includes speeches proposing and seconding the address, and contributions from the Prime Minister and Leader of the Opposition. Remaining days are allocated to thematic discussions determined among the parties through what are known as the 'usual channels'.

The themes for **Commons** debates are :

- ◇ Monday 26 June: Brexit and foreign affairs
- ◇ Tuesday 27 June: Education and local services
- ◇ Wednesday 28 June: Health, social care and security
- ◇ Thursday 29 June: Economy and jobs

The themes for **Lords** debates are :

- ◇ Monday 26 June: Business, economic affairs, energy, transport, environment and agriculture
- ◇ Tuesday 27 June: Home affairs, justice, constitutional affairs, devolved affairs, communities and local government
- ◇ Wednesday 28 June: Exiting the European Union
- ◇ Thursday 29 June: Education, health, welfare, pensions and culture

The Bills most likely to be introduced first are:

- ⇒ **Repeal Bill** (Expected to be published in July; Second reading likely immediately after Summer Recess—September 2017)
- ⇒ **Immigration Bill** (May opened negotiations with an offer on right to remain for EU nationals. Amber Rudd has suggested there will be a consultation over summer)
- ⇒ **International Sanctions Bill** (It is anticipated the Government would seek to introduce the Bill early in the session given the important compliance it involves.)
- ⇒ **Courts Bill** (As much of the legislation is written, it could feasibly be expected in autumn 2017).
- ⇒ **Financial Guidance and Claims Bill** ([Published](#))
- ⇒ **Goods Mortgages Bill** (Policy work has been ongoing for a number of years, and indeed the Law Commission is drafting primary legislation already)



Key People

Government

Baroness Evans of Bowes Park- Leader of the House of Lords and Privy Seal

psleaderofthelords@cabinetoffice.gov.uk



As leader of the Conservatives in the Lords, the buck lies with Baroness Evans when it comes to Government business getting held up in the Lords. A former director of the Free Schools Network, she became a junior Government whip after the 2015 election.

Relatively unknown in the Tory ranks, it was seen as a surprise when she was appointed leader by Theresa May last year and given a seat around the Cabinet table, with some members questioning if she had the experience for the top role. Recently that criticism has returned, with the [Daily Mail](#) reporting that senior peers are unhappy with her close connection to former Downing Street Chief of Staff Nick Timothy and are considering mounting a coup to replace her with her predecessor Lord Strathclyde who was leader in the Lords for a decade.

Lord Taylor of Holbeach CBE - Chief Whip

holgovernmentwhips@parliament.uk



As Chief Whip in the Lords, Lord Holbeach has the unenviable task of trying to keep order amongst Conservative peers and ensure they follow the party line, which is more important than ever now Labour and the Liberal Democrats have the collective numbers to defeat the Government.

This role is made more difficult by the limited powers he has at his disposal. Unlike his counterparts in the Commons, Lord whips cannot threaten peers with de-selection at the next election, and there are few ministerial posts to reward loyal supporters. Tory Peers who do not have ministerial ambitions can vote against the party line without fear of any major consequence as was seen in the Article 50 vote when seven Tories broke ranks to support the opposition and cause embarrassment for the Government. Instead the Whips have to persuade members on the merits of the vote, or do deals on future legislation.

Baroness Anelay of St Johns DBE- Minister of State, Department for Exiting the European Union

psjoyceanelay@dexeu.gov.uk



As the sole Department for Exiting the European Union spokesperson in the House of Lords, Baroness Anelay will be responsible for guiding the highly anticipated Repeal Bill through the Lords and will play an important role in managing the other six Brexit bills announced in the Queen's Speech.

Having previously served as a Minister in the Foreign and Commonwealth Office, she was moved in the most recent reshuffle to replace David Jones MP.

Her appointment received a mixed reaction based on her previous support of the remain campaign in the European Union referendum.

Conservative Backbenchers

Lord Heseltine CH

tracy.rodger@haymarket.com



Former Deputy Prime Minister and once seen as a future PM, Lord Hesseltine has become a thorn in the Government's side in the House of Lords particularly on the issue of Europe. A strong Europhile, Heseltine was a passionate remain campaigner, however since the referendum he has stuck to his conviction that leaving the EU is not in the national interest of the UK. Heseltine was one of seven Tory peers to vote against invoking Article 50, saying that it was the ["worst decision" Britain had ever made](#). Could be expected for him to raise further concerns throughout the process of the Brexit bills working their way through the chamber.

Dr Baroness Altmann CBE -

altmannr@parliament.uk



Having joined Lord Hesselstine in the lobby to vote against invoking Article 50, Baroness Altmann is another Tory peer who will be causing the whips some difficulty in the new parliament.

A relatively new Peer (appointed 2015), Altmann's background is in finance and pensions where she was a Director-General at Saga and before that a Policy Adviser in Number 10 leaving on Pensions under David Cameron. Upon her appointment she briefly served as Minister of State for Pensions and acted as the official Department for Work and Pensions Spokesperson in the Lords.

Lord Bowness

bownessp@parliament.uk



A fellow Europhile Peer, Lord Bowness is another member of the gang of seven Conservatives who voted against Article 50.

Appointed in 1996, Bowness was a solicitor for over 40 years and has since served on a number of European Union Committees in the Lords, covering areas such as Agriculture, Foreign Affairs and Local Government.

Labour Peers

Baroness Smith of Basildon- Leader of the Opposition

smithangela@parliament.uk



Labour leader in the Lords since after the 2015 General Election, Baroness Smith has a ministerial background having been an MP who served in both the Blair and Brown Governments in a number of roles across the Cabinet Office, Local Government, the Home Office and the Northern Ireland Office.

Recently Smith has spoken about the long-standing Salisbury Convention (and recently written an [article in the Times](#) (££)) and has made clear that Labour will respect the legitimacy of the elected House of Commons and will not try to thwart bills which have been passed through the Commons, going further than the current convention which only stipulates such treatment for manifesto bills not any Government bill.

Lord Bassam of Brighton-Labour Chief Whip

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As Labour's Chief Whip Lord Bassam faces similar difficulties to Lord Holbeach when it comes to keeping order amongst his party in the Lords.

If Labour are to take advantage of the Conservative's weakened state it will be critical for them to keep disciplined and ensure all members vote with the whip.

Liberal Democrats

Lord Newby OBE- Liberal Democrat leader in the Lords



newbyr@parliament.uk

Leader of the Liberal Democrats in the Lords since 2016, Lord Newby has not kept silent his views on Theresa May and her minority Government. He

has made clear that in the view of the Liberal Democrats the Prime Minister has “lost any mandate she thought she originally had” and that he would ensure that the Lords put pressure on the Government to “think again on questionable legislation”.

It is based on this that he is opposed to the Salisbury Convention and will not whip his members to support the Government manifesto.

Lord Thomas of Gresford - Liberal Democrat Shadow Attorney General



thomasm@parliament.uk

As a former barrister and judge he was raised to the peerage in 1996. Since then he has held several roles in the Lords, as spokesperson for the Home Office, Attorney General, Justice and Wales.

He recently wrote an article stressing any shared Conservative-DUP Bills did “not attract the Salisbury Convention, and on any view, Lib Dem peers are entitled to say ‘No’”



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