

HOUSE OF LORDS BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the House of Lords Bill as introduced into the House of Lords on 7 November 2007. They have been prepared by the sponsor of the Bill in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The principal change introduced by the Bill is the creation of an independent appointments commission to recommend names for the conferment of life peerages. This replaces the existing non-statutory body operating under Lord Stevenson of Coddanham. The Bill stipulates the framework within which the commission has to operate and sets certain criteria and goals. These include appointment on the basis of conspicuous merit and a willingness and capacity to contribute to the work of the House of Lords, ensuring that at least twenty per cent of the members are independent of any political party, and providing that no one party shall enjoy an absolute majority in the House. The Bill requires the commission to have regard to the need to reduce the size of the House; it stipulates that the aim should be to ensure that it is no larger than the House of Commons.
4. The Bill also closes off the by-election option for bringing hereditary peers into the House of Lords. The practical effect of the change is to render all members of the House of Lords life peers, other than the Bishops and Archbishops who sit as the Lords Spiritual.
5. The Bill also makes provision for certain peers who sit in the House of Lords to cease to be members. It empowers the House to make provision for permanent leave of absence for those peers who no longer wish to continue to attend the House. It also provides for those members who fail to attend the House during the course of a session that lasts beyond a period of three months to be deemed to have taken

permanent leave of absence, though with provision for exceptions to be made.

6. The Bill provides also for the expulsion from membership of the House of Lords of any peer who is convicted and sentenced to be detained indefinitely or to a prison term of more than one year. This provision is designed to bring the House into line with the provision that applies in respect of members of the House of Commons. The provision, as with that for taking permanent leave of absence, does not affect the retention of a peerage but is confined to removing the peer from membership of the House of Lords.

SUMMARY

Part 1 – Appointments Commission

7. This part of the Bill creates an appointments commission. It makes provision for the appointment of members of the commission and the criteria to be adopted by the commission in making recommendations for life peerages and the principles that should guide it in determining how many recommendations to make in any one year.
8. The commission is empowered to receive recommendations for the conferment of life peerages from the leaders of the political parties and from the Prime Minister acting in an official capacity as well as from members of the public in respect of non-party nominees. All recommendations put forward by the commission shall be presented by the Prime Minister to the Crown. No recommendations for life peerages shall be made other than by the commission.

Part 2 - Exclusion of hereditary peers

9. This Part amends section 2 of the House of Lords Act 1999.
10. Following enactment of this measure, no members will be chosen to sit under the terms of section 2 of the 1999 Act. This closes off the so-called by-election provision for keeping the number of hereditary peers in the House at 92 and has the effect of making all existing members of the House previously selected under the provisions of section 2 life peers *de facto*.

Part 3 – Permanent leave of absence

11. This Part makes provision for members of the House of Lords to apply for and to take permanent leave of absence (permanent leave of absence by reason of application). It empowers the House of Lords to make provision under its Standing Orders for members to be granted permanent leave of absence. At present, members of the House may take leave of absence for a Parliament or a remainder of a Parliament. (As of 7 October 2007, 12 peers were on leave of absence.) This is a

means of letting the House know that a member will not be attending, though the member may, with one month's notice, resume attending.

12. Though any peer at present may choose not to attend the House, they remain members of the House and are classed accordingly. The provisions of the Bill ensure that members opting to take permanent leave of absence are not included in the membership figures of the House. This may be of benefit to the members concerned, since they will no longer receive writs of summons and communications from bodies outside the House, as well as of benefit to the appointments commission in its calculation of the number of life peerages that it may wish to recommend.
13. The Bill provides that the House shall determine such criteria as it deems appropriate for granting permanent leave of absence. It will be a matter for the House to decide if it wishes to offer a particular package of privileges (such as limited dining rights) and considerations for members who avail themselves of this provision.
14. The Part also makes provision for peers who fail to attend any sitting during a session that extends beyond a period of three months to be deemed to have taken permanent leave of absence (permanent leave of absence by reason of failure to attend the House). The House of Lords is empowered by Standing Order to exclude a member from this provision in cases where an application for exclusion is made to a body stipulated by the House and where that body considers that the reason given is of sufficient merit for the provision for permanent leave of absence not to apply.
15. As with members who apply for and are granted leave of absence, members who are deemed to have taken leave of absence under this provision will not be included in the membership figures of the House.
16. Members who take or are deemed to have taken permanent leave of absence, and thus ceased to be counted as members of the House, shall be entitled to vote in elections to the House of Commons and to stand for election to that House.

Part 4 – Conviction of serious criminal offence

17. This Part of the Bill is designed to ensure that any member of the House of Lords who is convicted and imprisoned for a serious offence is not entitled to remain as a member of the House.
18. The Bill provides that any member convicted of an offence and sentenced or ordered to be detained indefinitely or for more than one year shall be expelled from membership.

19. A person who is expelled from membership may only return if a new peerage is conferred. Circumstances in which expelled members return are anticipated to be rare, if not non-existent.

20. Members who are expelled from the House, unless otherwise disqualified, shall be entitled to vote in elections to the House of Commons and to stand for election to that House.

Part 5 – Supplementary Provisions

21. This Part makes the usual provisions governing commencement and short title of the Bill.

DEVOLUTION

22. The Bill relates only to membership of the House of Lords. It thus constitutes a reserved matter for the purposes of the Scotland Act 1998 and an excepted matter for the purposes of the Northern Ireland Act 1998.

COMMENTARY

PART 1 – APPOINTMENTS COMMISSION

Clause 1

The Commission

23. Clause 1 provides for the creation of an appointments commission and that no recommendations for the creation of life peerages shall be made other than by the Commission. Subsection (3) provides that all recommendations shall be put to the Prime Minister for presentation to the Crown. This maintains the constitutional position of the Prime Minister as the principal adviser to the monarch.

Clauses 2 and 3

Membership

24. Clause 2 stipulates the composition of the commission and the means by which members are appointed. In order to ensure that it is an independent body, members shall be nominated jointly by the Speaker of the House of Commons and the Lord Speaker of the House of Lords, following consultation with such bodies as they deem appropriate. They are required to have regard to the need to ensure that, where members have been associated with political parties, there is political balance. To enhance the independence of the commission, at least four of the nine members of the commission are to be privy counsellors and at least four shall be independent of any registered political party. Provision is made to define what constitutes independence of any registered political party. The members of the

commission shall be appointed by the Crown, thus further enhancing the independence of the body.

25. Clause 3 enables the commission to determine its own rules and procedures, as long as not incompatible with the requirements imposed by other provisions of the Bill.

Clause 4
Recommendations to the commission

26. Clause 4 empowers the commission to receive proposals for the conferment of life peerages from (a) members of the public, (b) the leader of any registered political party, and (c) the Prime Minister acting in his official capacity and not as party leader.

Clauses 5, 6 and 7
Basis of nominating new peers

27. Clauses 5 and 6 provide the basis on which persons are to be nominated for life peerages. Clause 5 provides that all names put forward must meet certain criteria. The principal criteria are those of conspicuous merit and a willingness and capacity to make a contribution to the work of the House of Lords. The commission may devise additional criteria and subsection (4) provides that in proposing additional criteria the commission shall have regard to the diversity of the population of the United Kingdom. The Clause provides that the criteria agreed by the commission shall be laid before both Houses of Parliament and be subject to the negative resolution procedure.
28. Clause 6 empowers the commission to draw up guidelines to meet the criteria and provides that these guidelines shall be laid before both Houses of Parliament and subject to the negative resolution procedure. Once approved, the guidelines are to be publicised by the commission in such manner as it deems appropriate.
29. Clause 7 provides that where the commission certifies that a person recommended for a peerage meets the published criteria, that certificate shall be conclusive. This is designed to exclude the possibility of a legal challenge to a recommendation of the commission.

Clause 8
Principles to be followed by the commission

30. Clause 8 stipulates the principles to be followed by the commission in deciding its overall strategy in recommending the conferment of life peerages. It is required to publish each year a statement as to how many recommendations it intends to make and the reasons for its decision. It may at its discretion decide that no recommendations shall be made in a particular year.

31. The commission is required to have regard to three principles: that at least twenty per cent of the membership shall comprise members who are independent of any registered political party, that no one party shall have an absolute majority of the membership of the House, and that the Government of the day shall be entitled to have a larger number of members than the official Opposition. For the purpose of fulfilling the first principle, the Clause stipulates the criteria for determining whether a person is independent of any registered political party. It also provides, as an adjunct to the last principle, that the Government majority shall comprise no more than three per cent of the membership of the House. This enables the Government to have more members than any other party but prevents the governing party becoming so large as to make it difficult for the commission, in the event of a change of Government, to ensure that the new Government has more members than other parties while having regard to the other principles stipulated in the Bill.
32. The Clause also provides that, subject to the principles stipulated in subsection (2), the commission shall have regard to the need to achieve a membership not exceeding the size of the House of Commons. The membership of the House following enactment of the House of Lords Act 1999 was only marginally larger than that of the House of Commons (666 peers to 651 MPs). Since that time, the size of the House has grown and by 7 October 2007 it had exactly 100 members more than the House of Commons (746 peers to 646 MPs). Sub-section (5) of the Clause provides that the commission is to seek to achieve the reduction in membership to one no more than that of the House of Commons within eight years or the lifetime of two full Parliaments, whichever is the longer.
33. The Clause provides that for the purposes of calculating the percentage of members independent of any registered political party, the Lords of Appeal in Ordinary (the law lords) shall not be included. This is a temporary measure as the law lords will cease to be members of the House once the Supreme Court, created under the Constitutional Reform Act 2005, comes into being (expected to be October 2009). The Clause provides that those who have ceased to serve as Lords of Appeal in Ordinary (former law lords) shall be included in the calculation.

Clause 9
Provision of further information

34. Clause 9 provides that party leaders shall inform the commission of the procedure and criteria adopted by their respective parties for putting names forward to the commission. This is designed to enhance the transparency of the process and to increase public confidence in the way in which individuals are put forward for the award of life peerages.

35. The Clause also places a duty on party leaders to supply any additional information as may be requested by the commission. This is designed to ensure that the commission is furnished with the material it deems necessary for making a recommendation and also to enhance public confidence in the process.

PART 2 – EXCLUSION OF HEREDITARY PEERS

Clause 10

Closing off the by-election option

36. Clause 10 amends the House of Lords Act 1999 to provide that no vacancy resulting from the death of an excepted peer (that is, one of the 92 hereditary peers continuing as members under the provisions of the 1999 Act) shall be filled. The provision thus closes off the so-called by-election procedure. The effect is that no further hereditary peers can become members of the House of Lords under the terms of the 1999 Act. The provision does not prevent an excepted hereditary peer from being nominated for a peerage under Part 1 of the Bill.

PART 3- PROVISION FOR PERMANENT LEAVE OF ABSENCE

Clause 11

Permanent leave of absence by reason of application

37. Clause 11 empowers the House of Lords to make provision in its Standing Orders for members to be granted leave of absence. The Clause provides that such leave of absence may be granted only to those who apply for it. It will not be possible for the House to grant it without a request from the member concerned. The House is empowered to determine the criteria it deems appropriate for granting such leave of absence.

Clause 12

Permanent leave of absence by reason of failure to attend the House

38. Clause 12 provides that any member of the House who fails to attend the House during the course of a session, where that session exceeds more than three months in duration, shall be deemed to have taken permanent leave of absence. It also provides that the House may by Standing Order make provision for a member to be excluded from this provision in cases where the member makes an application to a body stipulated by the House and where that body deems that the reason given is of sufficient merit for the provision not to apply.

Clauses 13 and 14

Permanent leave of absence – consequences for membership

39. Clause 13 provides that a person taking permanent leave of absence under this Part of the Bill shall no longer be a member of the House of

Lords. Clause 14 provides that where an individual ceases to be a member of the House of Lords under this provision, that person shall be entitled to vote at elections to the House of Commons and to be eligible to be, and be elected as, a member of the House of Commons.

PART 4 – CONVICTION OF A SERIOUS CRIMINAL OFFENCE

Clauses 15, 16 and 17

Conviction of a serious criminal offence and the consequences for membership

40. Clause 15 provides that a member of the House of Lords convicted of one or more offences and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year shall cease to be a member of the House of Lords. The provision applies only to members convicted following enactment of the Bill.
41. Clause 16 stipulates the circumstances in which an expelled member may return. A peer removed from membership under this Clause would be eligible for nomination under Clause 4. Clause 17 provides that a member expelled from the House shall, unless otherwise disqualified, be entitled to vote at elections to the House of Commons and to be eligible to be, and be elected as, a member of the House of Commons.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

42. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading as to the compatibility of the provisions of the Bill with the European Convention on Human Rights (as defined by section 1 of that Act).
43. No such provision applies in respect of Bills introduced by Private Members. However, having considered the possible implications, the sponsor of the Bill believes the House of Lords Bill to be fully compatible with the European Convention on Human Rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.

Clause 10

44. Hereditary peers who are on the register of peers who wish to be considered for election under section 2 of the 1999 Act will no longer have a right to be considered for election to the House under that section. However, each peer on the register (as with other hereditary peers who are not on the register and who do not sit in the House of Lords) will be eligible for consideration for membership of the House as

life peers. Various holders of hereditary peerages sit in the House of Lords by virtue of having life peerages conferred on them.

Clauses 11 and 12

45. Clauses 11 and 12 provide that certain members of the House will no longer be deemed to be members once granted permanent leave of absence. No Convention rights are believed to be engaged by this provision. Under Clause 11, permanent leave of absence can only be granted to those who request it. Under Clause 12, provision is made for members who are deemed to have taken permanent leave of absence to make application to a body stipulated by the House and for the provision not to apply where they are deemed to have provided a reason of sufficient merit to justify the provision of subsection (1) not to have effect. No member is thus excluded from membership of the House without their agreement or without the opportunity to provide reasons as to why they have not been able to attend.

46. Clause 14 also provides that members, once deemed no longer to be members of the House, are entitled to vote at parliamentary elections and be, and be elected as, members of the House of Commons. They thus enjoy the same franchise rights as those conferred on excepted hereditary peers under the House of Lords Act 1999.

Clause 15

47. Clause 15 provides for the exclusion of a peer from membership of the House when convicted of a serious offence. No Convention rights are believed to be engaged. The provision will only apply to those convicted of an offence following enactment of the measure. Clause 16 provides that a person expelled from the House is, unless otherwise disqualified, entitled to vote at elections to the House of Commons. Clause 17 provides that a member expelled from the House may sit again if a new peerage is conferred.

COMMENCEMENT

48. Clause 18 provides for Parts 1 and 3 to come into effect at the end of a period of three months beginning with the day on which the Act is passed. This provides time to make necessary preparations for the appointment of a commission and for the House of Lords to consider what changes may be appropriate for giving effect to the provisions under Clauses 11 and 12 relating to permanent leave of absence.

49. All other provisions take effect on the day in which the Act is passed.