

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 14 March 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, ensuring that at least twenty per cent of the members are not affiliated with any political party, and that no one party shall enjoy an absolute majority in the House. The Bill also 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 empowers the House of Lords to make provision for permanent leave of absence for those peers who no longer wish to continue to attend the House, and for the expulsion from membership of the House of Lords of any peer who is sentenced to a prison term of more than one year. (This latter provision is designed to bring the House into line with the House of Commons, where conviction and imprisonment for more than one year is a disqualification for

membership.) The provision does not affect the retention of the peerage but is confined to expulsion from membership of the House.

SUMMARY

Part 1 – Appointments Commission

6. 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.
7. The commission is empowered to receive recommendations for the conferment of life peerages from the leaders of 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

8. This Part amends Section 2 of the House of Lords Act 1999.
9. 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

10. This Part 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 1 December 2006, 13 peers were on leave of absence.) This is a means of letting the House know that the member will not be attending, though the member may, with one month's notice, resume attending.
11. 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 taking 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.

12. 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.

Part 4 – Conviction of serious criminal offence

13. This Part of the Bill is designed to ensure that any member of the House who is convicted and imprisoned for a serious offence is not entitled to remain as a member of the House.
14. 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.
15. 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.

Part 5 – Supplementary Provisions

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

TERRITORIAL EXTENT

17. 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

18. 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

19. 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 by the Speaker of the House of Commons, following consultation with other appropriate persons or bodies, including the Lord Speaker in the House of Lords. The Speaker is 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, a majority of the members are to be privy counsellors and at least four members shall not be aligned with any political party. The members shall be appointed by the Crown, thus further enhancing the independence of the body.
20. 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

21. 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 a party leader.

Clauses 5, 6 and 7

Basis of nominating new peers

22. 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 criterion is that of conspicuous merit. The commission may also devise additional criteria and sub-section (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 the House of Commons for approval.
23. Clause 6 empowers the commission to draw up guidelines to give effect to meet the criteria but that these shall not take effect until approved by the House of Commons. Once approved, the guidelines are to be publicised by the commission in such manner as it deems appropriate.

24. Clause 7 provides that where a 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

25. 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.
26. The commission is required to have regard to three principles: that at least twenty per cent of the membership shall comprise members who are not affiliated to any registered political party, that no one party shall have a majority of members in the House, and that the Government of the day shall be entitled to have a larger number of members than the official Opposition. 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.
27. The Clause also provides that, subject to the principles stipulated in sub-section (2), the commission shall also 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 had a membership only marginally larger than that of the House of Commons (666 peers to 651 MPs). Since then, the size of the House has grown and at the start of 2007 had nearly 100 members more than the House of Commons (750 to 646). Sub-section (5) of the Clause provides that the commission is to seek to achieve the reduction in membership to one no more than the Commons within the lifetime of two full Parliaments.
28. The Clause provides that for the purposes of calculating the percentage of members not affiliated with a 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

29. 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.
30. 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

31. 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 a hereditary peer from being nominated for a life peerage under Part I of the Bill.

PART 3 – PROVISION FOR PERMANENT LEAVE OF ABSENCE

Clauses 11 and 12

32. Clause 11 empowers the House of Lords to make provision in its Standing Orders for members to be granted permanent leave of absence. The Clause provides that such leave of absence may be granted only to those who request 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.
33. Clause 12 provides that members who have been granted permanent leave of absence shall no longer be members of the House.

PART 4 – PROVISION FOR EXPULSION

Clause 13

34. Clause 13 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.
35. The provision is intended to apply only to those convicted of an offence following enactment of the Bill. In order to clarify that it will not be retrospective, an amendment will be moved at committee stage of the Bill to stipulate that it will apply only in such circumstances.
36. Clause 14 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.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

37. 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 about the compatibility of the provisions of the Bill with the European Convention on Human Rights (as defined by section 1 of that Act).
38. 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

39. 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 not in the register and who do not sit in the House) 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.

Clause 11

40. Clause 11 provides that certain members of the House will no longer be deemed to be members of the House once granted permanent

leave of absence. No Convention rights are believed to be engaged by this provision as permanent leave of absence can only be granted to those who request it. The provision is thus voluntary. There is no power created under the Bill that would enable compulsory leave of absence to be introduced.

Clause 13

41. Clause 13 provides for the expulsion 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. Sub-section (2) of the Clause provides that a member expelled from the House may sit again if a new peerage is conferred. This is considered to be analogous to the position in the House of Commons, where a Member who is expelled may later seek election to the House.

COMMENCEMENT

42. Clause 14 provides for Parts 1 and 3 to come into force 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 providing for permanent leave of absence.

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