

HOUSE OF LORDS (HEREDITARY PEERS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the House of Lords (Hereditary Peers) Bill as introduced on 5 September 2024 [Bill 7].

- These Explanatory Notes have been prepared by the Cabinet Office in order to assist the reader of this Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	1
Policy background	2
Legal background	2
Territorial extent and application	3
Commentary on provisions of Bill	4
Commencement	4
Financial implications of the Bill	4
Parliamentary approval for financial costs or for charges imposed	5
Compatibility with the European Convention on Human Rights	5
Duty under section 20 of the Environment Act 2021	6
Duty under section 13C of the European Union (Withdrawal) Act 2018	6
Related documents	6
Annex A - Territorial extent and application in the United Kingdom	7

Overview of the Bill

- 1 The main purpose of the Bill is to remove the right of hereditary peers to sit and vote in the House of Lords.

Policy background

- 2 Prior to the House of Lords Act 1999 (“the 1999 Act”) a hereditary peerage generally carried with it the right to sit and vote in the House of Lords¹. The 1999 Act removed the right of most hereditary peers to membership of the House of Lords (and therefore their right to sit and vote in the House). The original intention was that the 1999 Act should remove the membership of all hereditary peers. However, under a compromise agreement reached during the passage of the Bill, an amendment was made which excepted from that removal 90 hereditary peers, as well as hereditary peers holding the offices of the Earl Marshal and Lord Great Chamberlain. These ‘excepted’ hereditary peers remain in the House today.
- 3 In its 2024 General Election manifesto, the Government committed to removing the right of the excepted hereditary peers to sit and vote in the House of Lords. The Bill gives effect to that commitment.
- 4 As a result of the Bill, the excepted hereditary peers will no longer be members of the House of Lords. The Earl Marshal and Lord Great Chamberlain will continue to be able to exercise their ceremonial functions in the House but will no longer be members.
- 5 As well as removing the final link between hereditary peerage and membership of the House of Lords, the Bill also abolishes the jurisdiction of the House of Lords in hereditary peerage claims. The intention is that:
 - a. any complex or disputed peerage claims that would have otherwise been referred to the House of Lords will instead be referred to the Judicial Committee of the Privy Council by way of section 4 of the Judicial Committee Act 1833; and
 - b. claimants to a peerage of Ireland will no longer petition the House of Lords to confirm their succession.

Legal background

- 6 The current membership of the House of Lords consists of Lords Spiritual and Temporal. The Lords Spiritual are the Archbishops of Canterbury and York and 24 other senior Bishops of

¹ A hereditary peerage is a dignity created by the Crown and passed to successive generations. A hereditary peerage covers a peerage of England, Scotland, Ireland, Great Britain and the United Kingdom. Previously, Scottish peers and Irish peers could only elect some of their number to represent them in the House of Lords and peeresses were barred from sitting. The Peerage Act 1963 removed the disqualification for peeresses and Scottish peers. Irish peers no longer sit and vote in the House of Lords.

the Church of England. The Lords Temporal comprise life peers created under the Life Peerages Act 1958, Lords created for life under the Appellate Jurisdiction Act 1876 to serve as Lords of Appeal in Ordinary² and the excepted hereditary peers referred to above.

- 7 Section 1 of the 1999 Act provides that no-one shall be a member of the House of Lords by virtue of a hereditary peerage. Section 2 provides that this exclusion from membership of the House of Lords does not apply to the excepted hereditary peers referred to above. Once a person is excepted by virtue of section 2 from the exclusion in section 1, they are excepted for life (until an Act of Parliament provides to the contrary). Section 2 also provides that the arrangements for selecting the 90 excepted hereditary peers, and for subsequently filling any vacancies via a by-election, are to be set out in the Standing Orders of the House of Lords³.
- 8 Section 3 of the 1999 Act provides that hereditary peers who have been excluded from membership of the House of Lords by section 1, and who are not excepted under section 2, are no longer disqualified from voting in elections to the House of Commons or from being elected as MPs.
- 9 In addition, the House of Lords currently has a role in considering disputed or complex peerage claims, as well as confirming the succession to peerages of Ireland. As outlined in the Royal Warrant of 2004, applications to be entered onto the Roll of the Peerage are made to the Lord Chancellor in the first instance. Disputed or complex peerage claims (which occur infrequently) may be referred to the House of Lords following a petition to the Crown. The House of Lords Standing Orders provide for referral of claims to a committee for peerage claims, which is set up on an ad hoc basis to consider such claims and report to the House (see Standing Orders 77 and 78). The process for those claiming Irish peerages is similar, save that the claimants petition the House of Lords directly to confirm their succession, as well as applying to the Lord Chancellor to be entered onto the Roll of the Peerage (see Standing Orders 79 and 80).

Territorial extent and application

- 10 An amendment or repeal made by the Bill has the same extent as the provision amended or repealed. Subject to this, the Bill extends to England and Wales, Scotland and Northern Ireland.
- 11 The Bill relates to the reserved matter of the Parliament of the United Kingdom in the Scottish and Welsh devolution settlements, and the excepted matter of the Parliament of the United Kingdom in relation to Northern Ireland. As such, legislative consent motions are not required.

² The Appellate Jurisdiction Act 1876 has been repealed but Lords previously created under the Act remain members of the House.

³ See Standing Order 9.

- 12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Exclusion of remaining hereditary peers

- 13 Clause 1 repeals section 2 of the 1999 Act so that there are no longer any hereditary peers who are members of the House of Lords by virtue of the exception in that section to the exclusion in section 1 of the 1999 Act. This means that no present or future holders of a hereditary peerage have the right to sit and vote in the House of Lords by virtue of that peerage.

Clause 2: Claims to hereditary peerages

- 14 Clause 2 abolishes the jurisdiction of the House of Lords in relation to hereditary peerage claims.

Clause 3: Consequential amendments

- 15 Clause 3 makes consequential amendments to reflect the removal of the exception in section 2 of the 1999 Act to the exclusion in section 1 of that Act, and more generally the position that there will no longer be any members of the House of Lords by virtue of their hereditary peerage.

Clause 4: Extent and commencement

- 16 Clause 4 sets out the territorial extent of the Bill, as per the 'Territorial extent and application' section above; and the commencement of the Bill, as per the 'Commencement' section below.

Clause 5: Short title

- 17 Clause 5 establishes the short title of the Bill as the House of Lords (Hereditary Peers) Act 2024.

Commencement

- 18 The Act arising from the Bill will come into force at the end of the parliamentary session in which it receives Royal Assent. Clause 4(4) provides that any writ of summons issued for the present Parliament in respect of a hereditary peerage has no effect after that session.

Financial implications of the Bill

- 19 The Bill in itself will not trigger any financial expenditure.

Parliamentary approval for financial costs or for charges imposed

- 20 The Bill does not entail any financial costs or charges so neither a money resolution nor a ways and means resolution is required.

Compatibility with the European Convention on Human Rights

- 21 The Government considers that the Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, a statement has been made under section 19(1)(a) of the Human Rights Act 1998 to this effect.
- 22 The principal human rights issue raised by the Bill relates to whether a hereditary peer who is deprived of their membership of the House of Lords (or of their potential to stand for election to a position in the House of Lords in the future) has any Convention Rights in respect of the loss of that entitlement. However, membership of Parliament, including as a member of the House of Lords, is a public law right, which has been held by both domestic courts and the European Court of Human Rights to be outside the scope of the relevant ECHR articles.
- 23 In respect of Article 6 (right to a fair trial), the Commission affirmed in *X v United Kingdom* (App. No. 8208/78) that “that the right to participate in the work of the House of Lords cannot be regarded as a ‘civil right’ within the meaning of Article 6. It is of the opinion that such a right, connected as it is to the composition of part of the legislature, falls into the sphere of public law rights outside the scope of Article 6”. This decision has been affirmed in subsequent cases in Strasbourg.
- 24 The principle has been followed domestically and extended to other articles of the ECHR. In *Baron Mereworth v Ministry of Justice* [2011] EWHC 1589 (Ch), Lewison J held that the right to receive a writ of summons and to sit and vote in the House of Lords was a public right and that Article 6 was therefore not engaged. Nor was the right to receive a writ a part of private life for the purposes of Article 8 (right to respect for private or family life), or a possession for the purposes of Article 1 of the First Protocol (protection of property).
- 25 Article 3 of the First Protocol (right to free elections) also does not arise, in respect of the by-elections by which hereditary peers may currently become members of the House of Lords. In *Field and others v United Kingdom*, App. No. 34442/18 the Court held that the right to participate in these elections does not fall within the ambit of this Article, because these could not be held to constitute direct or indirect elections aimed at allowing the UK electorate an opportunity to vote and express views on the choice of legislature.

26 Article 14 (prohibition on discrimination) only arises where other Convention rights are in question - it follows from the above that there can be no breach of Article 14 here.

Duty under section 20 of the Environment Act 2021

27 The Chancellor of the Duchy of Lancaster is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Duty under section 13C of the European Union (Withdrawal) Act 2018

28 The Chancellor of the Duchy of Lancaster is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and other parts of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

29 The following documents are relevant to the Bill and can be read at the stated locations:

- House of Lords Act 1999, <https://www.legislation.gov.uk/ukpga/1999/34>
- Royal Warrant establishing the Roll of the Peerage, <https://www.college-of-arms.gov.uk/RoyalWarrant2004.pdf>
- Judicial Committee Act 1833, <https://www.legislation.gov.uk/ukpga/Will4/3-4/41>

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 2	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 3	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 4	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 5	Yes	Yes	N/A	Yes	N/A	Yes	N/A

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