

*These notes refer to the House of Lords Reform (No. 2) Bill
as brought from the House of Commons on 3rd March 2014 [HL Bill 92]*

HOUSE OF LORDS REFORM (NO. 2) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the House of Lords Reform (No. 2) Bill as brought from the House of Commons on 3rd March 2014. They have been prepared by the Cabinet Office, with the consent of Lord Steel of Aikwood, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes 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 part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. This Bill is a Private Member's Bill, which was introduced into the House of Commons by Dan Byles MP on 19th June 2013, through the ballot procedure. It contains three substantive provisions about the circumstances in which people cease to be members of the House of Lords.

4. The Bill had its second reading debate on 18th October 2013, completed its committee stage on 15th January 2014 and had its report stage and third reading on 28th February 2014.

5. Similar provisions to those in the Bill were contained in Private Members' Bills introduced into the House of Lords in the 2008/09 and 2010/12 Sessions by Lord Steel and in the House of Lords Reform Bill introduced by Baroness Hayman in the 2013/14 Session. The 2010/12 Bill, as passed by the House of Lords, is substantially the same Bill as this. The 2013/14 Bill has not been proceeded with. Provisions on resignation and on disqualification for a serious offence were also included in the Constitutional Reform and Governance Bill in 2010, but were subsequently withdrawn, and in the House of Lords Reform Bill in 2012, which was withdrawn after being given a second reading in the House of Commons.

OVERVIEW OF THE STRUCTURE OF THE BILL

6. The Bill has seven clauses.

7. Clause 1 provides that a member of the House of Lords who is a peer may resign as a member of the House by giving notice in writing to the Clerk of the Parliaments.

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8. Clause 2 provides that a member of the House of Lords who is a peer and does not attend the House during a Session ceases to be a member of the House at the beginning of the following Session. This does not apply if:

- the peer has taken leave of absence;
- the peer is disqualified from sitting or voting in the House or suspended for the relevant Session;
- the House resolves that disqualification should not apply by reason of special circumstances; or
- the Session in question is less than six months long.

9. Clause 3 states that a member of the House of Lords who is convicted of a serious offence ceases to be a member of the House. A person is convicted of a serious offence if they are sentenced to imprisonment for more than twelve months, not suspended. A member will be disqualified on the grounds of a conviction outside the United Kingdom only if the House so resolves.

10. Clause 4 sets out the effect of ceasing to be a member of the House of Lords. A departing member will not be entitled to receive a writ to attend. A peer who ceases to be a member of the House of Lords will not be prevented from voting in elections to the House of Commons and standing for election there by reason of their peerage. The clause also makes provision for the replacement of hereditary peers by a by-election. It provides that a departing member may not return to be a member of the House.

11. Clause 5 states that certificates issued under the Bill by the Lord Speaker are to be conclusive.

12. Clauses 6 and 7 are final provisions covering interpretation, extent, commencement and the short title of the Bill.

TERRITORIAL EXTENT

13. The Bill extends to the whole United Kingdom. Its subject matter is not devolved.

COMMENTARY ON CLAUSES

Clause 1: Resignation

14. Subsection (1) states that a member of the House of Lords who is a peer may retire or otherwise resign as a member of the House of Lords by giving notice in writing to the Clerk of the Parliaments. At present it is not possible for a member to resign.

15. Subsection (2) provides that the notice must specify a date from which the resignation will take effect; it must also be signed by the departing peer and a witness.

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16. Subsection (3) states that the peer ceases to be a member of the House of Lords at the beginning of the date specified in the notice.

17. Subsection (4) provides that resignation may not be rescinded.

Clause 2: Non-attendance

18. Subsection (1) provides that if a member of the House of Lords who is a peer fails to attend the House during a Session the member ceases to be a member of the House at the beginning of the following Session. At present it is open to a member to obtain leave of absence from the House but there are no sanctions where someone who does not have leave of absence persistently fails to attend.

19. Subsection (2) requires there to be a certificate by the Lord Speaker to the effect that the peer at no time during the Session attended the House, according to officials' attendance records; and that the peer had not been given leave of absence from the House for the Session in accordance with the procedures of the House.

20. Subsection (3) contains exceptions to subsection (1). It is not to apply if the peer was disqualified from sitting or voting in the House, or suspended from the House, for the whole of the Session. For example, a peer who is a member of the House of Lords and also a member of the European Parliament is disqualified from sitting in the former legislature while a member of the latter. Such a peer would not be disqualified under subsection (1). It is also open to the House of Lords to decide that subsection (1) should not apply by reason of special circumstances. If, for example, the House decided under clause 3(9) that a peer who had been imprisoned abroad for over a year should not be disqualified under that clause, it could also decide that the peer's absence from the House because of the imprisonment should not lead to disqualification under clause 2.

21. Subsection (4) provides that subsection (1) does not apply if the Session in question is less than six months long.

22. Subsection (5) states that the reference to attendance is to attending the proceedings of the House, including any of its committees. The reference to committees would include a joint committee of the House of Lords and the House of Commons. It would not include, for example, simply being within the precincts of the House or using its facilities.

23. Subsection (6) provides that the clause applies to the first Session that begins after it comes into force, as well as subsequent Sessions. A peer who had not attended the House during the Session in which the Bill was passed would therefore not fall within the clause.

Clause 3: Conviction of serious offence

24. Subsection (1) states that a member of the House of Lords who is convicted of a serious offence ceases to be a member of the House. The clause is similar, although not identical, to the provisions which apply in the House of Commons (see section 1 of the Representation of the People Act 1981). Unlike clauses 1 and 2, which only apply to members of the House of Lords who are peers, clause 3 applies to all members of the House of Lords, including Lords Spiritual.

25. Subsection (2) requires there to be a certificate by the Lord Speaker to the effect that the member has been convicted of a criminal offence and sentenced or ordered to be imprisoned or detained either indefinitely or for at least one year. The person must be a member of the House of Lords at the time of the conviction and sentence.

26. Subsection (3), however, provides that the person may lose their membership under this clause if the offence was committed when the person was not a member. It also states that it does not matter whether the offence, conviction, sentence, order, imprisonment or detention occurred within or outside the United Kingdom (although this is subject to subsection (9)).

27. Subsection (4) provides that the clause is not to have retrospective effect; it is only to apply to offences committed on or after the day on which it comes into force.

28. Subsection (5) excludes suspended sentences and orders from the operation of the clause. This is because suspended sentences are, by their very nature, intended to be less punitive.

29. Subsection (7) makes provision for what is to happen if a member successfully appeals against their conviction or sentence. The Lord Speaker is to issue a further certificate stating that the member has been successful on appeal, at which point the first certificate is to be treated for the purposes of the Bill as if it had never had effect.

30. Subsection (8) explains what is meant by a member being successful on appeal. Either the conviction must have been quashed or the sentence or order must have become a sentence or order which is not imprisonment or detention for an indefinite period or for more than a year.

31. Subsection (9) makes different provision in the case of a conviction outside the United Kingdom. It states that a certificate may be issued only if the House of Lords resolves that the member should be disqualified. It also requires the Lord Speaker to issue the certificate following such a resolution.

Clause 4: Effect of ceasing to be a member

32. This clause deals with the effect of a person ceasing to be a member of the House of Lords under the Bill (subsection (1)).

33. Subsection (2) confirms that the departing member will be disqualified from attending the proceedings of the House of Lords. As in clause 2, this includes proceedings of Committees of the House.

34. Subsection (3) confirms that a departing member, whatever their type of membership, is not entitled to receive a writ of summons to attend the House. An existing writ ceases to have effect.

35. Subsection (4) states that in the case of a person who is one of the 92 hereditary peers who are members of the House of Lords under section 2 of the House of Lords Act 1999 and who ceases to be a member, section 1 of that Act will apply to them and they will not be entitled to membership of the House of Lords as a hereditary peer. As a result, under section 3(1) of that Act such a peer is no longer disqualified, by reason of their peerage, from voting in elections to the House of Commons or being elected as a Member of Parliament.

36. Subsection (5) provides for the same effect for peers other than hereditary peers, so that they are not, by reason of their peerage, disqualified from voting at elections to the House of Commons or being elected as a member of that House.

37. Subsection (6) provides that the requirement for an overseas elector to have been on a register of parliamentary electors is met, in the case of a peer who loses their membership under the Bill, if they have been on a register of local government electors. Being able to vote in a parliamentary election as an overseas elector depends on the voter having previously been on the register of parliamentary electors. At present a peer who is a member of the House of Lords cannot vote in a parliamentary election and so will not be on that register, but he or she is entitled to vote in a local government election. The subsection therefore converts the relevant legislative reference to the register of parliamentary electors into a reference to the register of local government electors.

38. Subsection (7) requires Standing Orders of the House of Lords to make provision for by-elections to be held to replace hereditary peers who resign or are expelled for non-attendance or as a result of a conviction of a serious offence and who were excepted from section 1 of the House of Lords Act 1999 as a result of being elected. At present section 2(4) of that Act provides for by-elections only where such a peer has died.

39. Subsection (8) provides that a departing member may not return to be a member of the House.

Clause 5: Certificate of Lord Speaker

40. Subsection (1) states that the Lord Speaker's certificate is to be conclusive.
41. Subsection (2) provides that the Lord Speaker can issue a certificate on his or her own initiative.

Clause 6: Interpretation

42. Subsection (1) defines membership of the House of Lords, for the purposes of the Bill, as entitlement to receive writs of summons to attend the House.
43. Subsection (2) states that in determining if a person is entitled to a writ, disqualifications on conviction for treason, insolvency grounds or where the person is an MEP are to be ignored. This is because under the legislation relating to these disqualifications a person is said to be no longer entitled to receive a writ of summons or to sit and vote in the House of Lords. The effect of subsection (2) is that the Bill applies to peers subject to such disqualifications – and so they can, for example, resign as a member.
44. Subsection (3) confirms that the term 'peer' includes a person upon whom a dignity has been conferred by virtue of appointment as a Lord of Appeal in Ordinary (a Law Lord) – see section 6 of the Appellate Jurisdiction Act 1876, which first provided for Lords of Appeal in Ordinary.

Clause 7: Short title, commencement and extent

45. Subsection (2) brings clauses 1 and 2 into force at the end of three months starting on the date that the Bill is passed.
46. Subsection (3) provides that the remaining provisions will come into force on the day that the Bill is passed.
47. Subsection (4) sets out the extent of the Bill, namely that it will apply to the whole of the United Kingdom.

FINANCIAL EFFECTS

48. The provisions within this Bill will have no noteworthy financial impact.

PUBLIC SECTOR MANPOWER

49. The provisions of this Bill will have no notable effect on public sector manpower.

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IMPACT ASSESSMENT

50. The provisions within this Bill will not have any direct impact on business or the third sector so an impact assessment is unnecessary.

COMMENCEMENT

51. Clauses 3 to 7 of the Bill are to come into force on the day on which it is passed. Clauses 1 and 2 will come into force three months from that day.

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