

# **PARLIAMENT (JOINT DEPARTMENTS) BILL [HL]**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Parliament (Joint Departments) Bill [HL] as brought from the House of Lords on 24th April 2007. Paragraphs 1 to 22 have been prepared by the authorities of the House of Commons and the House of Lords; the remainder of the notes have been prepared by the Cabinet Office. The purpose of the notes is to assist the reader of the Bill, but 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 AND SUMMARY**

3. The two Houses of Parliament are not corporate bodies. The Parliamentary Corporate Bodies Act 1992 (c.27) established a corporate body for each House ('the Corporate Officer of the House of Lords' and 'the Corporate Officer of the House of Commons') to hold property, make contracts and perform other functions for the purposes of the respective Houses.

4. The arrangements for the administration of each House are entirely separate, although there are instances where common services are provided (for example, works and estate services are provided for both Houses by the House of Commons; and the Parliamentary Archives service for both Houses is provided by the House of Lords). In each case, the House that benefits from, but does not provide, the service makes an appropriate financial contribution.

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5. As the need for shared services has grown, both Houses now wish to be able to make new arrangements for the provision of particular joint services to both of them, through a unified management structure under the direction of an official who is accountable to both Houses. In 2006 the House of Commons Commission and the House Committee of the House of Lords established, on a provisional basis within the House of Commons and with staff loaned to it from the House of Lords, a joint department for information and communications technology.

6. In order to facilitate new arrangements of this kind on a permanent basis, the Bill enables the two Corporate Officers to act together, subject to the approval of the House of Commons Commission and of the House of Lords on the recommendation of its House Committee, in establishing joint departments of both Houses and conferring functions on them, and makes provision for related matters such as the employment of staff, and the transfer of staff from each House, to work in a joint department.

## **TERRITORIAL EXTENT**

7. The Bill extends to the whole of the United Kingdom.

8. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if amendments were made that related to such matters the consent of the Scottish Parliament would be sought for them.

## **COMMENTARY ON CLAUSES**

### **Clause 1 – Joint Departments of the Houses of Parliament**

9. Clause 1 is concerned with the establishment (*subsection (1)*) of, and allocation of functions (*subsection (2)*) to, joint departments of the two Houses, and with the powers of the Corporate Officers in relation to them, which include powers to divide, amalgamate or abolish any of them (*subsection (3)*), and to hold land and other property, and enter into contracts, in connection with a joint department (*subsection (4)*).

### **Clause 2 – Exercise of functions of the Corporate Officers**

10. Clause 2 requires that the Corporate Officers must exercise their functions jointly in relation to joint departments (*subsection (1)*). Any exercise by the Corporate Officers of their power to establish, divide, amalgamate or abolish a joint department, or to allocate to it such functions as would change the overall character of the services it provides, must be approved by the House of Commons Commission, and by the House of Lords on the recommendation of its House Committee or any successor committee (*subsections (2) to (4)*).

**Clause 3 – Staff**

11. Clause 3 provides for the appointment of staff to a joint department. They are to be appointed by the Corporate Officers under a contract of employment (*subsection (1)*), and their pay and other conditions of service are to be broadly in line with those for staff in the Home Civil Service (*subsection (2)(a) and (b)*). Their pensions and similar benefits are to be in line with the Principal Civil Service Pension Scheme, unless provision for such pensions and benefits continues to be made under their existing pension scheme (*subsections (2)(c) and (3)*).

**Clause 4, and the Schedule – Staff transfers**

12. Clause 4 gives effect to the Schedule, which makes provision about the transfer of staff to and from a joint department, with a view to ensuring that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I.2006/246) ('TUPE') apply to transfers of staff under the Bill, in so far as those Regulations would not apply in any event (*paragraph 1*). In particular, *paragraphs 3 to 6* of the Schedule are concerned with ensuring that, where staff have been designated for the purpose by a House authority (defined in *paragraph 2* to mean the House of Commons Commission or the Corporate Officer of the House of Lords) or by the Corporate Officers, the conditions for the application of 'TUPE' (for instance, that the transfer of an undertaking has occurred) are treated as satisfied, in so far as any of them may not *in fact* be satisfied in the case of that staff member.

13. *Paragraph 3* is concerned with the transfer of a person employed in a House department (defined in *paragraph 2* as a department of either House) in connection with a function of the House department which is allocated instead to a joint department. It provides that the re-allocated function is to be treated as transferred from the House authority to the Corporate Officers, and that transfer is to be treated as the transfer of an undertaking. A person employed in connection with the function is to be treated as employed in the undertaking immediately before the transfer if he is designated by the House authority for the purposes of the change (defined in *paragraph 2* to mean the change in allocation of the function).

14. *Paragraph 4* is concerned with the case where a joint department is allocated a function which has not previously been exercisable by a House department. Where a person employed in a House department is designated by his House authority for the purposes of the allocation of the function, then, the function is to be treated as transferred from the House authority to the Corporate Officers, and that transfer is to be treated as the transfer of an undertaking. The designated person is to be treated as employed in the undertaking immediately before its transfer.

15. *Paragraph 5* provides that, where a function exercised by a joint department is to be allocated instead to a House department, the re-allocated function is to be treated as transferred to the House authority from the Corporate Officers, and that transfer is to be treated as the transfer of an undertaking. A person who is employed in the joint department in connection with the function and who has been designated by the Corporate Officers for the purposes of the change in the allocation of the function is to

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be treated as employed in the undertaking immediately before the transfer (even though that person may not necessarily have been employed in connection with the exercise of the function in relation to that House).

16. *Paragraph 6* is concerned with cases where a function ceases to be allocated to a joint department but is not allocated to a House department. In that event, the Corporate Officers may designate either or both of the House authorities and the function is then treated as transferred from the Corporate Officers to the House authority of whichever House is designated, or (where both House authorities are designated) it is treated as comprising a function which is transferred to each of them. That transfer is to be treated as the transfer of an undertaking, and a person who is employed in the joint department in connection with the function and has been designated by the Corporate Officers for the purpose of its transfer to the House authority concerned is to be treated as employed in the undertaking immediately before the transfer.

#### **Clause 5 – Application of enactments**

17. Clause 5 is concerned with the application of statutory provisions in the context of a joint department, irrespective of when the relevant provision was enacted (*subsection (3)*).

18. *Subsection (1)* provides that enactments are to apply to staff in a joint department in the same way as they apply to staff in the House of Lords. Such enactments as apply to staff in the House of Lords (for instance, the Race Relations Act 1976 (c.74)) usually apply in the same way as they apply to other employees generally.

19. *Subsection (2)* provides that things done by, on behalf of or in relation to a joint department are to be treated as done by, on behalf of or in relation to each House, for the purposes of any enactment which applies to either House.

#### **FINANCIAL EFFECTS**

20. The Bill will not give rise to any significant new or additional expenditure.

#### **EFFECTS ON PUBLIC SERVICE MANPOWER**

21. The Bill will not result in any significant increases in public service manpower.

## **SUMMARY OF REGULATORY IMPACT ASSESSMENT**

22. The Bill will not give rise to any impact on the costs of business.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

23. 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 Convention rights (as defined by section 1 of the Act). The Leader of the House of Commons, Mr Jack Straw, has made the following statement:

“In my view the provisions of the Parliament (Joint Departments) Bill [HL] are compatible with the Convention rights.”

24. The purpose of the Bill is to facilitate (in appropriate cases) the provision of joint services to both Houses through a unified management structure under the direction of an official who is accountable to both Houses. Clause 4 of (and the Schedule to) the Bill makes provision for the transfer of staff to or from a joint department. In doing so, it ensures that continuity of employment, and contractual entitlements, are preserved. Despite the transfer of staff, employees will be in the employment of the joint department on the same terms and conditions as they enjoyed with their previous employer.

25. The only Convention right which is potentially relevant is Article 1 of Protocol 1 (protection of property). The Cabinet Office does not consider that contracts of employment, or any rights associated with such contracts, constitute ‘possessions’ within the meaning of that Article. Even if they did, to the extent that the provisions of the Bill interfere with those rights, they serve the legitimate purpose of ensuring an effectively functioning public administration and are proportionate to the achievement of that aim. They strike a fair balance between the general interest of the community and the requirements of the protection of human rights. As noted, employees of the joint department will be employed on the same terms and conditions as they enjoyed with their previous employer. The Cabinet Office therefore considers that this provision is compatible with Convention rights, and does not consider that any of the other provisions of the Bill engage Convention rights.





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