

HOUSE OF LORDS

Select Committee on the Constitution

5th Report of Session 2014–15

Status of the Leader of the House of Lords

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Nicolas Besly (clerk), Dr Stuart Hallifax (policy analyst) and Hadia Garwell and Philippa Mole (committee assistants). Professor Adam Tomkins is the legal adviser to the committee.

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Status of the Leader of the House of Lords

1. Our terms of reference require us “to keep under review the operation of the constitution”. In keeping with that we occasionally publish reports for the information of the House on issues of constitutional concern or uncertainty.¹
2. Widespread concern has been expressed in the House of Lords about the status of the Leader of the House following the recent ministerial reshuffle. A private notice question was asked² and the chairman of the committee received correspondence from members, including from the Leader of the Opposition, Baroness Royall of Blaisdon. In this report we set out for the information of the House the facts of the situation as we understand them.
3. We are concerned only with the constitutional implications of recent events. This report is in no way about the ability of Baroness Stowell of Beeston to perform the functions of Leader. It has been clear in exchanges in the House that the House has full confidence in her.

Background to the reshuffle

4. The Prime Minister began a ministerial reshuffle on 14 July 2014. On 15 July 2014 it was announced that Lord Hill of Oareford, until then the Leader of the House of Lords and Chancellor of the Duchy of Lancaster, would be the Prime Minister’s nominee as the next UK European Commissioner. The Prime Minister announced on Twitter that Baroness Stowell of Beeston would be the next Leader of the House of Lords and Chancellor of the Duchy of Lancaster. Later that day it emerged that, unlike her predecessors, Lady Stowell would not be a full member of the Cabinet. She would be a minister “attending Cabinet” but would not be paid a Cabinet minister’s salary. The Conservative party announced that the difference between the salary she would be paid as a minister of state and the salary of a Cabinet minister would be paid from party funds. The fact that the Leader would not be a full member of the Cabinet meant that there would be no member of the House of Lords in the Cabinet.³
5. On 16 July 2014 the Prime Minister said in the House of Commons, “I am happy to confirm that the Leader of the House of Lords will do the same job as her predecessor, will sit at the same place round the Cabinet table as her predecessor, and will receive the same amount of money.”⁴ Later that day a private notice question was asked in the House of Lords. In her answers the new Leader said she had “the authority I need to represent your Lordships in

¹ For example, *Money Bills and Commons Financial Privilege* (10th Report, Session 2010–12, HL Paper 97).

² HL Deb, 16 July 2014, cols 594–98.

³ The Senior Minister of State at the Foreign and Commonwealth Office and Minister for Faith and Communities, Baroness Warsi, also attends Cabinet but is not a full member of it.

⁴ HC Deb, 16 July 2014, col 856.

Cabinet.”⁵ On salary arrangements she stated, “I can assure the House that careful consideration is being given to the propriety of any arrangement.”⁶

6. In the Court Circular it emerged that on 16 July 2014 the Leader took the oath of office and kissed hands on her appointment as the Lord Privy Seal (rather than the Chancellor of the Duchy of Lancaster). The post of Leader does not itself attract a ministerial salary, so Leaders of the House of Lords (and Leaders of the Commons) are appointed to other posts in order to receive a salary. The office of Lord Privy Seal ranks higher in the order of precedence than the Chancellor of the Duchy of Lancaster. It also has a particular status in the House of Lords by virtue of the House of Lords Precedence Act 1539.
7. On 22 July 2014 the Leader placed in the Library of the House a copy of a letter in which she stated that she would not accept a top-up to her ministerial salary from Conservative party funds. She stated that as the responsibilities of the Leader extend to all parts of the chamber she felt it right that her salary comes from a single source and that source should be the public purse.
8. Also on 22 July 2014 the Prime Minister wrote to Lord MacGregor of Pulham Market, the chairman of the Association of Conservative Peers, stating that he “completely understand[s] the concern that has arisen in the Lords following the reshuffle”. He agreed “that the Leader of the House should, as a general rule, always be a full member of the Cabinet; unfortunately it was not possible on this occasion, owing to the provisions of the Ministerial and other Salaries Act 1975. I want to reassure you, and the whole House, that I see the current situation as a purely temporary one, which I will want to rectify at the earliest opportunity. I will certainly do so immediately after the General Election, if I am returned as Prime Minister, if no opportunity has arisen to do so over the coming nine months.” He said that Lady Stowell would have the same role in Cabinet as her predecessors and that she would attend the same meetings in Downing Street.

Cabinet membership

9. *The Cabinet Manual* states, “Cabinet is the ultimate decision-making body of government.”⁷ The “Haldane report” of 1918 described it as “the mainspring of all the mechanisms of Government.”⁸ The business of government has changed considerably since 1918, but the Cabinet still occupies a central role in government—for example in deciding on proposals for constitutional reform (such as altering the composition of the Houses of Parliament).
10. In our January 2010 report on *The Cabinet Office and the Centre of Government*, we recommended that changes by the Prime Minister to the

⁵ HL Deb, 16 July 2014, col 595.

⁶ *Ibid.*, col 596.

⁷ *The Cabinet Manual*, 1st edition (October 2011), paragraph 4.1.

⁸ Ministry of Reconstruction, *Report of the Machinery of Government Committee*, 1918 (Cd. 9250), paragraph 5.

machinery of government which have constitutional implications should be approached carefully.⁹

11. The distinction between Cabinet members and ministers “attending Cabinet” is a relatively recent one.¹⁰ Following the 2001 general election the Minister for Transport was designated as a minister attending Cabinet.¹¹ The first Cabinet after the 2005 general election also included one such minister: the Minister for Europe.¹²
12. The number of ministers “also attending Cabinet” increased substantially during Gordon Brown’s premiership. In his first Cabinet Mr Brown had six members attending Cabinet: four were ministers and two were parliamentary private secretaries to the Prime Minister.¹³ Following a 2009 reshuffle, ministers in the Cabinet who were not full Cabinet ministers were divided into those “also attending Cabinet” and those who would attend when their ministerial responsibilities were on the agenda.¹⁴ Following the recent reshuffle there are 11 ministers “also attending Cabinet”, including the Leader of the House of Lords.¹⁵

Limit on Cabinet membership

13. The membership of the Cabinet is not set out in law, but the salaries payable to ministers are. These are prescribed in the Ministerial and other Salaries Act 1975. This Act also limits the number of ministerial salaries that can be paid at each level, setting a total of 109 paid ministers. The Act sets out the salaries of the Lord Chancellor, the Prime Minister, the Chancellor of the Exchequer, other Cabinet ministers (including secretaries of state and other ministers¹⁶) and non-Cabinet ministers. It limits the number of people who may receive a Cabinet salary to 21 (plus the Lord Chancellor).¹⁷ Another Act limits the number of MPs who may be paid or unpaid ministers in the

⁹ Constitution Committee, *The Cabinet Office and the Centre of Government*, (4th Report, Session 2009–10, HL Paper 30), paragraphs 214–17.

¹⁰ In this analysis of ministers attending Cabinet we exclude the offices of Attorney General and Lords Chief Whip. It has been long-standing practice for the Attorney General to attend Cabinet where his presence is necessary. Practice has varied as to whether Lords Chief Whips have attended Cabinet. The Lords Chief Whip has not attended Cabinet in this Parliament.

¹¹ ‘Labour: The Reshuffle—The New Cabinet’, *The Independent*, 9 June 2001.

¹² ‘After the election: The full cabinet’, *The Guardian*, 9 May 2005.

¹³ ‘Gordon Brown’s First Cabinet’, Government Web Archive available at: http://webarchive.nationalarchives.gov.uk/20070705153908/http://direct.gov.uk/en/Gtgl1/GuideToGovernment/CentralGovernmentAndTheCivilService/DG_10018985

¹⁴ ‘Labour in crisis: The reshuffle: Who’s in, who’s out’, *The Guardian*, 6 June 2009. This list did not include parliamentary private secretaries.

¹⁵ Until the recent reshuffle the Leader of the House of Commons was in the category of ministers attending Cabinet. In the recent reshuffle the Leader of the House of Commons, who is also First Secretary of State, was made a full Cabinet minister.

¹⁶ The other posts are “(a) Lord President of the Council, (b) Lord Privy Seal, (c) Chancellor of the Duchy of Lancaster, (d) Paymaster General, (e) Chief Secretary to the Treasury, (f) Parliamentary Secretary to the Treasury, and (g) Minister of State”.

¹⁷ Schedule I, Part V. The structure and drafting of the Act can be hard to follow and in this respect may be open to different interpretations. However, it is clear from statements at the time the Act was passed and practice since that the limit is 21 Cabinet salaries.

Government to 95, which includes whips but not parliamentary private secretaries.¹⁸

14. The 1975 Act consolidated previous legislation, the most relevant being the Ministerial and other Salaries Act 1972. In proposing the bill in 1972, the then Leader of the House of Lords said it would increase from nine to 19 the number of salaries (increased to 21 under the 1975 Act) paid to Cabinet ministers. This would leave “a head room of three, if necessary, over the size of the present Cabinet in the present Administration.”¹⁹ The 1975 Act, although limiting the number of Cabinet salaries, does not limit the size of the Cabinet or government more generally: additional unpaid Cabinet members may be appointed.²⁰ There is currently an unpaid Minister without Portfolio who “attends Cabinet” and there are various unpaid junior ministers in both Houses.

Representation of the House of Lords in the Cabinet

15. The 1975 Act does not make provision about which House of Parliament ministers may be drawn from.²¹ Until the recent reshuffle, so far as we are aware, there has always been at least one member of the House of Lords in the Cabinet. Until 2005 the Lord Chancellor was the Speaker of the House of Lords as well as a senior Cabinet member. At the time of the 1975 Act it would have been assumed that at least the Lord Chancellor would always be a peer in the Cabinet.

16. In 2010 the House of Commons Public Administration Committee stated:

“The presence of Cabinet Ministers in the House of Lords has diminished markedly since the turn of the twentieth century, when there were nine Members of the House of Lords in the Cabinet, including the Prime Minister. Attlee’s first Cabinet in 1945 and Macmillan’s in 1957 contained five Lords, and Churchill’s in 1951 included seven. By the mid-1960s, however, it had become the norm for an incoming Prime Minister to recruit only the Leader of the House of Lords and the Lord Chancellor from the House of Lords into his or her Cabinet.”²²

The report noted that secretaries of state have continued to be appointed from the House of Lords.²³

17. The *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* states, “The Leader of the House is appointed by the Prime Minister, is a member of the Cabinet, and is responsible for the conduct of

¹⁸ House of Commons Disqualification Act 1975, section 2 and Schedule 2. The limits on Cabinet and Government membership are explained in the House of Commons Library note *Limitations on the number of Ministers and the size of the Payroll vote* (SN/PC/03378, 14 September 2012).

¹⁹ HL Deb, 1 February 1972, col 680.

²⁰ Shaun Woodward MP served as the unpaid Secretary of State for Northern Ireland from 2007 to 2010.

²¹ With the implied exceptions of the Prime Minister and the Chancellor of the Exchequer. Whereas different salaries are payable for other ministers if they are an MP or a peer, no provision is made for the possibility of those office holders being peers.

²² Public Administration Committee, *Goats and Tsars: Ministerial and other appointments from outside Parliament* (8th Report, Session 2009–10, HC 330), paragraph 47.

²³ *Ibid.*, paragraphs 48–50. In 2009–10 there were two secretaries of state in the Lords, in addition to the Leader of the House.

government business in the Lords.”²⁴ *Erskine May* also describes the Leader of the House of Lords as a member of the Cabinet.²⁵ We know of no examples of Leaders of the House of Lords who were not also members of the Cabinet.²⁶

Conclusion

18. There are two important aspects of the current situation: that the Leader is no longer a full Cabinet member, and that there are no full Cabinet members in the House of Lords.
19. In our report on the constitutional implications of coalition government we regretted “the decline in the number of senior ministers in the House of Lords under the coalition Government.”²⁷ The current situation can be seen as connected to the need for ministers of both coalition parties to be represented in the Cabinet.
20. The Leader is both a representative of the Government in the House and a representative of the House in the Government. Part of how the Leader represents the House in Government is by giving the update on Lords business which is a standard part of the Cabinet agenda. But the role extends to more than that.
21. The Leader may often have to give unpalatable advice to ministerial colleagues about the chances of their legislation passing the House, or the time it will take. The Leader may have to block proposals which would clearly not pass the House or would be contrary to its interests. The Leader has to express the House’s misgivings to departments about their policies. The Leader has to ensure that questions and correspondence from peers are answered promptly and fully. In such matters the Leader needs authority. While some of that authority can come from tangible things like sitting at the Cabinet table and receiving Cabinet papers, some of it is intangible, such as having full Cabinet status on the same terms as senior ministers in the Commons. Having a member of the House of Lords in the full Cabinet sends an important signal to the rest of Government (ministers and the civil service), and to the House itself, about the status of the House of Lords. If the Leader is no longer a full member of the Cabinet there may be a risk that the views of the House are not fully listened to in the Cabinet.
22. Moreover, it is a core part of our constitution that ministers are drawn from the legislature and that the legislature is bicameral. It sits very uneasily with

²⁴ *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2013 edition), paragraph 4.03. The phrase has appeared in the *Companion* since 1972.

²⁵ Malcolm Jack (ed.), *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (24th edition, 2011), page 74.

²⁶ In proceedings on the private notice question the Leader stated, “Some documentation I have seen suggests that one of my most distinguished predecessors, my noble friend Lord Carrington, was not a full member of the Cabinet when he was Leader of your Lordships’ House.” (*op. cit.*, col 597.) Lord Carrington was Leader from October 1963 to October 1964. He was also a Minister without Portfolio. *Hansards* from that time list him as a full Cabinet member. In addition, Lord Carrington in his memoirs twice referred to being in the Cabinet as Leader: *Reflect on things past: The memoirs of Lord Carrington* (1988), pages 183 and 188.

²⁷ Constitution Committee, *Constitutional implications of coalition government* (5th Report, Session 2013–14, HL Paper 130), paragraph 92.

those principles for one House of Parliament to be unrepresented in the full Cabinet.

23. It is not our intention in this report to make recommendations. We note the Prime Minister's assurance that the current position is temporary and will be rectified at the first opportunity. Were it desired to prevent a repeat of this situation, that may be achieved in law through an amendment to the Ministerial and other Salaries Act 1975. For example, the Act could be amended to provide that one of the 21 salaries for Cabinet ministers must be paid to a member of the House of Lords or to provide that the Leader of the House of Lords must be among the 21, or in either case to increase the number to 22.