

*These notes refer to the House of Lords Act 1999 (c.34)
which received Royal Assent on Thursday 11 November 1999*

HOUSE OF LORDS ACT 1999

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the House of Lords Act 1999 (c. 34) which received Royal Assent on 11 November 1999. They have been prepared by the Cabinet Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The House of Lords Act 1999 is the first part of the Government's step-by-step approach to full-scale reform of the House of Lords. A Royal Commission has been set up to consider further, comprehensive reform of the House and is due to report by 31 December 1999. For the transitional House, a new, more independent system for nominating peers will be introduced. The Government's detailed proposals are set out in a White Paper *Modernising Parliament Reforming the House of Lords*, published on 20 January 1999

(Cm 4183).

THE ACT

4. The Act's main purpose is to restrict membership of the House of Lords by virtue of a hereditary peerage. It also removes the existing disqualifications of a hereditary peer, unless he is excepted under section 2 of the Act from the general exclusion from the House of Lords, to vote in elections to the House of Commons and to stand as a candidate for, or be a member of, the House of Commons.

COMMENTARY ON SECTIONS

Section 1: Exclusion of hereditary peers

5. The main provision of the Act restricts membership of the House of Lords by virtue of a hereditary peerage. No present or future holders of a hereditary peerage in the peerage of England, Scotland, Ireland¹, Great Britain or the United Kingdom, or their heirs, have the right to sit and vote in the House of Lords by virtue of that peerage, or to sit and vote in committees of the House, or to speak in the House, or to receive a writ of summons, unless they are excepted from this general exclusion by section 2 of the Act.

1 ¹ Peers of Ireland have not been able to sit and vote in the House of Lords since the Irish Free State (Agreement) Act 1922. However, those who were members of the House of Lords at the time of the passing of that Act remained members until their death (see *The Petition of the Earl of Antrim and eleven other Irish peers* [1967] A.C. p. 691). The House of Lords Act does not change the position of peers of Ireland.

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6. The exclusion from membership applies to all those who are members of the House by virtue of a hereditary peerage, unless they are excepted from the exclusion under the terms of section 2. The general exclusion covers –
 - members of the Royal Family with the right to sit and vote in the House (the Prince of Wales², the Duke of Edinburgh, the Duke of York, the Duke of Gloucester, the Duke of Kent and the Earl of Wessex);
 - first holders of a hereditary peerage (of whom there were eight at the time of Royal Assent to the Act);
 - any holder of a peerage by virtue of acceleration, being the eldest son of a hereditary peer who is sitting by virtue of one of his father's peerages while the father is still alive; and
 - any holder of a hereditary peerage by virtue of the termination of a peerage in abeyance (where only female co-heirs survive to inherit the peerage and one is preferred by the Crown against another for the peerage).
7. The Act deprives excluded hereditary peers of all the privileges of membership of the House of Lords, including the privileges they enjoyed as members of Parliament. Parliamentary privileges cover various matters, many of which relate to the House of Lords as a whole (such as punishing improper conduct within the House itself), but include some that are personal to individual peers. One of the most important personal privileges is that no action can be taken against a peer for what he or she may say in Parliament. Hereditary peers excluded by the Act also lose the right to be paid allowances and to use the facilities of the House that are available to members, such as its library, research and restaurant facilities. The removal of these rights does not prevent the House from deciding to grant some rights to use the facilities of the House to a hereditary peer under the exercise of its own authority.
8. Holders of a hereditary peerage whose membership is ended by the Act cease to be excusable as of right from jury service. (They no longer fall within Part III of Schedule 1 to the Juries Act 1974, or Part III of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, or Schedule 3 to the Juries (Northern Ireland) Order 1996.)
9. The Act does not affect the rights of holders of a hereditary peerage excluded from the House of Lords to keep all the other titles, rights, offices, privileges and precedents attaching to the peerage which are unconnected with membership of the House of Lords.
10. At 1 November 1999, the House of Lords was composed of 758 hereditary peers, 542 life peers and 26 Archbishops and Bishops. The Act does not affect the position of members of the House of Lords who do not sit by virtue of a hereditary peerage: the Archbishops and Bishops of the Church of England; retired and existing Law Lords (who are created life peers under the Appellate Jurisdiction Act 1876) and life peers created under the Life Peerages Act 1958.
11. The Act does not affect the position of The Queen, who is not a member of the House of Lords by virtue of a hereditary peerage.

Section 2: Exception from section 1

12. The general exclusion of hereditary peers from membership of the House in section 1 of the Act does not apply to 90 hereditary peers or to the holder of the office of Earl Marshal (who is responsible for ceremony) or the person performing the office of Lord Great Chamberlain (who is The Queen's representative), as provided for in Standing Orders of the House of Lords. Any hereditary peer excepted from the general exclusion from the House of Lords remains a member of the House of Lords for life, or until such

² Section 6 (1) makes it clear that "hereditary peerage" includes the principality of Wales and the earldom of Chester.

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time as a further Act of Parliament is enacted to the contrary to implement further, long-term reform of the House of Lords.

13. Standing Orders provide for the 90 excepted peers to be elected. The Act provides that Standing Orders can, if necessary, be made in anticipation of the Act itself being passed, to enable elections to take place before Royal Assent and the successful candidates to be identified ready for the start of the next Session. Standing Order 9 (Election of Hereditary Peers) and Standing Order 10 (By-elections) of the Standing Orders of the House of Lords Relating to Public Business 1999 were made on 26 July 1999. The elections took place on 27, 28 October and 3 and 4 November 1999.
14. Standing Order 9 (Election of Hereditary Peers) provides for 75 of the 90 excepted peers to be elected from among the overall number of hereditary peers. In accordance with the Standing Order, they were elected in proportion to the four organised groupings in the House of Lords by the hereditary peers in their respective groupings. This gives 42 Conservatives, 28 Cross-bench, 3 Liberal Democrats and 2 Labour. The remaining 15 were elected by the whole House, in accordance with the Standing Order, to stand ready to serve as Deputy Speakers or in any other office that may be required by the House. Of the successful candidates in the election of these 15, 9 are Conservative, 2 Labour, 2 Liberal Democrats and 2 Cross-bench.
15. Standing Order 9 also provides that any vacancies arising due to the death of one of the 90 excepted peers shall be filled by the nearest runner-up in the relevant election or, if none is willing or available, by whatever means the House of Lords itself decides.
16. After the end of the first session of the next Parliament, Standing Order 10 provides that any vacancy due to the death of one of the 90 excepted peers shall be filled by the holding of a by-election. In accordance with the Standing Order, in the event of a vacancy among the 75 elected in proportion to the groupings, only the excepted peers in the party or cross-bench group in which the vacancy has occurred shall be entitled to vote. The whole House shall be entitled to vote in the event of the death of any of the 15 excepted peers ready to serve as Deputy Speakers or other office holders.
17. The certificate of the Clerk of the Parliaments is conclusive identification of the excepted peers.

Section 3: Removal of disqualifications in relation to the House of Commons

18. Under common law (see in particular the case of *Re Parliamentary Election for Bristol South East* [1964] 2QB 257), peers are prevented from voting in elections to the House of Commons and from standing as a candidate for, or being a member of, the House of Commons. Section 3 abolishes these disqualifications in respect of a hereditary peer, unless he is an excepted peer, and leaves the disqualifications in place in respect of hereditary peers who remain members of the House as excepted peers under section 2.

Section 5: Commencement and transitional provision

19. The Act, apart from section 5 and section 6, comes into force at the end of the Session of Parliament in which it is passed. Section 5 and section 6 come into force on Royal Assent. The Act received Royal Assent and Parliament was prorogued on the same day, Thursday 11 November 1999.
20. **Section 5(2)** overturns any presumption that a hereditary peer whose membership of the House of Lords is ended by section 1 might have a right or obligation to sit and vote in the House of Lords for the rest of the current Parliament by virtue of having already received a writ of summons for this Parliament. A writ of summons is a document issued by the Crown under the Royal Prerogative calling the person addressed to attend Parliament. On commencement of the Act, no hereditary peer who has received a writ of summons for the current Parliament has any right or obligation to sit or vote in the House for the remainder of the Parliament unless he is one of the excepted peers under

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section 2. Writs of summons issued to excepted peers identified as such before the end of the session continue to have effect.

21. The disqualifications explained above in paragraph 18 are removed in respect of hereditary peers whose membership is ended by section 1 at the end of the Session in which the Act is passed. Those entitled to vote on the qualifying date (15 September 1999 in Northern Ireland and 10 October 1999 in Great Britain) are included in the electoral register which operates from the following February. As the Session ended after 10 October 1999, no hereditary peers were entitled to vote on that date. Therefore they will not be able to vote in elections until February 2001. It is intended to make an order under the transitional provision in section 5(3) of the Act to enable hereditary peers to vote in Parliamentary elections from February 2000. Such an order will cover all hereditary peers excluded from the House of Lords, whether resident in the United Kingdom or overseas. The order can also ensure that all existing hereditary peers will be able to use their entitlement under the transitional provision to vote in European Parliamentary elections.

Schedule 1: Amendments

22. The Peerage Act 1963 allows peers on succeeding to a hereditary peerage to disclaim the peerage for life. A person may disclaim within twelve months of succeeding to a peerage, or if he succeeds before the age of twenty-one, within twelve months of attaining that age. If he applies for a writ of summons to the House of Lords then he loses the right to disclaim. The House of Lords Act does not remove the right to disclaim, but it repeals the references in section 1(2) to writs of summons, as a hereditary peer will no longer by virtue of being a hereditary peer be entitled to receive a writ of summons unless he is an excepted peer. The House of Lords Act makes it clear that a hereditary peer who is an excepted peer loses the right to disclaim his title.
23. **Schedule 1** also amends the Recess Elections Act 1975 to ensure that that Act can operate if a member of the House of Commons becomes an excepted peer. The amendment makes the necessary distinction between peers who are disqualified for membership of the House of Commons because they are excepted peers and therefore members of the House of Lords, and hereditary peers who are not so disqualified because they are not members of the House of Lords.

Schedule 2: Repeals

24. Having removed the restriction on disclaiming when in receipt of a writ of summons, the exemption from this requirement in cases prior to the commencement of the 1963 Act becomes redundant and therefore section 1(3)(b) of that Act can be repealed.
25. Section 2 of the 1963 Act makes special provision in relation to a person who is a member of the House of Commons or a Parliamentary candidate when he succeeds to the peerage. A person succeeding to a hereditary peerage will in accordance with section 3 of the House of Lords Act not be disqualified from membership of the House of Commons. A person will only be so disqualified if he becomes an excepted peer. As a peer who is a member of the House of Commons can refuse to become an excepted peer, there is no need to provide for the possibility of disclaimer. If, however, such a person decides to become an excepted peer then it is right that he should cease to be a member of the House of Commons and not be able to disclaim. Section 2 of the 1963 Act can therefore be repealed.
26. Section 3 of the 1963 Act sets out the effects of disclaimer of a peerage, one of which is that a person is not disqualified from membership of, or voting in elections to, the House of Commons. Since section 3 of the House of Lords Act removes these disqualifications for all hereditary peers who are not excepted peers, and since excepted peers cannot disclaim, this will no longer be one of the effects of disclaimer. Therefore the repeal in section 3(1)(b) of the 1963 Act removes the reference to membership of, and elections to, the House of Commons.

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27. One of the effects of section 3(2) of the 1963 Act is to prohibit the issue of a writ in acceleration to the person entitled to succeed to a disclaimed hereditary peerage on the death of its present holder. This provision can be repealed because in future writs in acceleration, which are a form of writ of summons, will not be issued.
28. Section 5 of the 1963 Act covers the same ground as section 3 of the House of Lords Act, but only in removing the disqualification of hereditary peers of Ireland from voting in elections to, and standing as candidates for, the House of Commons. Section 5 of the 1963 Act therefore becomes redundant and can be repealed.

REFERENCES TO THE COMMITTEE FOR PRIVILEGES

29. On 14, 18, 19 and 20 October 1999 the Committee for Privileges of the House of Lords considered the following two references from the House of Lords:
 - (i) “Whether the House of Lords Bill (as amended on Report) would, if enacted, affect the right of those hereditary peers who have answered to their writ of summons before the Bill receives Royal Assent to continue to sit and vote throughout the Parliament in which the Bill is enacted.”
 - (ii) “Whether the House of Lords Bill (as amended on Report) would, if enacted, breach the provisions of the Treaty of Union between Scotland and England.”
30. The unanimous opinion of the Committee on the first of these references was “that the House of Lords Bill would remove the right to sit and vote from all hereditary peers, who have answered to their writ of summons before the Bill receives Royal Assent (save those exempted by virtue of clause 2), from the end of the session in which the Bill is passed”. [Session 1998-99 First Report from the Committee for Privileges (HL Paper 106).]
31. The unanimous opinion of the Committee on the second of these references was “that the House of Lords Bill (as amended on Report) would not, if enacted, breach the provisions of the Treaty of Union between England and Scotland.” [Session 1998-99 Second Report from the Committee for Privileges (HL Paper 108).]

COMMENCEMENT

32. The Act came into effect on Thursday 11 November 1999.

HANSARD REFERENCES

The following table sets out the dates and Hansard references relating to the Act’s passage through Parliament.

Stage	Hansard Reference
House of Commons	
Introduction	V ol 323 No 22 Col January 1999
Publication of Bill and Statement on publication of the White Paper	V ol 323 No 23 C ols 609-921 1999
Second Reading	V ol 324 No E ols 609-697 1999

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2 February 1999	Vol 324 No 30 Cols 741-834
Committee	Vol 325 No 37 February 1999 Vol 325 No 37 February 1999 Cols 653-702
16 February 1999	Vol 325 No 38 Cols 745-831
3 March 1999	Vol 326 No 46 Cols 1084-1175
4 March 1999	Vol 326 No 47 Cols 1245-1311
Third Reading	Vol 327 No 55 March 1999 Vol 327 No 55 March 1999 Cols 832-998
Debate on the White Paper	Vol 332 No 99 Cols 653-743 1999 Vol 332 No 99 Cols 653-743 1999
Commons' Consideration of Lords Amendments	Vol 337 No 148 November 1999 Vol 337 No 148 November 1999 Cols 1131-1259

House of Lords		
Statement on publication of the White Paper	20 January 1999	Vol 596 No 22 Cols 582-598
Debate on the White Paper	22 February 1999	Vol 597 No 40 Cols 841-944
23 February 1999	Vol 597 No 41 Cols 955-1098	
First Reading	17 March 1999	Vol 598 No 54 Col 726
Second Reading	29 March 1999	Vol 599 No 60 Cols 11-194
30 March 1999	Vol 599 No 61 Cols 204-430	
Committee	20 April 1999	Vol 599 No 68 Cols 1026-1156
27 April 1999	Vol 600 No 72 Cols 152-300	

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29 April 1999	Vol 600 No 74 Cols 440-540	
11 May 1999	Vol 600 No 80 Cols 1090-1194	
13 May 1999	Vol 600 No 82 Cols 1300-1444	
17 May 1999	Vol 601 No 83 Cols 12-140	
18 May 1999	Vol 601 No 84 Cols 190-237	
Recommitment of Clause 2	25 May 1999	Vol 601 No 89 Cols 777-914
Report	15 June 1999	Vol 602 No 98 Cols 134-276
22 June 1999	Vol 602 No 103 Cols 786-914	
30 June 1999	Vol 603 No 109 Cols 280- 420	
Consideration of Procedures of the House: Select Committee Third Report ¹	22 July 1999	Vol 604 No 124 Cols 1137-1176
Adoption of new Standing Orders	26 July 1999	Vol 604 No 126 Cols 1292-1294
Motion to refer the Bill to the Committee for Privileges: Writ of Summons ²	27 July 1999	Vol 604 No 127 Cols 1399-1422
Motion to refer the Bill to the Committee for Privileges: Treaty of Union ³	27 July 1999	Vol 604 No 127 Cols 1422-1433
Motion to refer the Bill to the Examiners	20 October 1999	Vol 605 No 138 Cols 1100-1125
Third Reading	26 October 1999	Vol 606 No 142 Cols 169-292
Announcement of the results of the election of 15 excepted hereditary peers ready to serve as Deputy Speakers or other office holders under clause 2	29 October 1999	Vol 606 No 145 Col 510
Announcement of the results of the election of 75 hereditary peers excepted under clause 2 in proportion to the four groupings	5 November 1999	Vol 606 No 150 Cols 1135-1136

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Lords' Consideration of Commons Messages	11 November 1999	Vol 606 No 154 Cols 1448-1464
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House of Lords Hansard Vol 606 No 154 Col 1469

House of Commons Hansard Vol 337 No 149 Col 1306

- 1 The House of Lords Select Committee on Procedure of the House met on 6 July 1999 (HL Paper 81) to consider new standing orders and other proposals to give effect to clause 2 (now section 2).
- 2 Reference considered by the Committee for Privileges on 14 and 18 October 1999
- 3 Reference considered by the Committee for Privileges on 19 and 20 October 1999