

HOUSE OF COMMONS (REMOVAL OF CLERGY DISQUALIFICATION) ACT 2001

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the House of Commons (Removal of Clergy Disqualification) Act 2001, which received Royal Assent on 11 May 2001. They have been prepared by the Home 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 when a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act removes any disqualification from membership of the House of Commons that arises by reason of a person having been ordained or being a Minister of a religious denomination, but continues the disqualification of Lords Spiritual from such membership.

BACKGROUND

4. Prior to the Act, certain clergy were disqualified by statute from becoming members of the House of Commons. The statutory provisions were set out in the House of Commons (Clergy Disqualification) Act 1801 and section 9 of the Roman Catholic Relief Act 1829. The clergy specifically referred to in these two enactments were “person[s] having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland”, and “person[s] in holy orders in the Church of Rome”.
5. In 1951 (In Re MacManaway) the Privy Council decided that the 1801 Act not only disqualified persons ordained in the Church of England, but also all persons ordained by a bishop in accordance either with the order of the Church of England or with other forms of episcopal ordination. In the particular case of Reverend James G. MacManaway, this included ordination according to the use of the Church of Ireland. Thus, in broad terms, those clergy who were ordained by a bishop were subject to the disqualification whereas clergy and ministers of religion who were not ordained by a bishop were not subject to the disqualification.
6. The Clergy Disqualification Act 1870, however, provided a procedure which enabled Church of England clergy to relinquish their clerical positions and, after a period of six months, be freed from the parliamentary disqualification. There is no equivalent statutory procedure for clergy of other churches.
7. The Home Affairs Committee Report on Electoral Law and Administration (House of Commons Session 1997-1998) recommended reform -

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“We therefore recommend that, with one exception, all restrictions on ministers of religion standing for, and serving as, Members of Parliament be removed; the exception would be in respect of all serving bishops in the Church of England who, for so long as places are reserved for their senior bishops in the House of Lords, should remain ineligible to serve as Members of the Commons”.

8. The position of Lords Spiritual differs from others who sit in the House of Lords. Section 5 of the Bishops Act 1878, whilst not itself conferring the right of bishops to sit in the House of Lords, provides that the number of bishops who may sit is not to be further increased. The number is limited to 26. The Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester are always summoned to sit in the House of Lords; the other 21 seats are filled by diocesan bishops summoned on the basis of seniority of date of becoming a diocesan bishop in the Church of England (other than the bishoprics of Sodor and Man and of Gibraltar in Europe). The House of Lords Standing Order No. 6 states that bishops to whom a writ of summons has been issued are not Peers but are Lords of Parliament. When sitting in the House of Lords, such bishops are “Lords Spiritual”.
9. Siobhain McDonagh introduced a Private Member’s Bill to rectify the position under the Ten Minute Rule Procedure on 16 June 1999. It had cross party support, but failed at 2nd Reading. The Government stated that it was sympathetic, but wanted to consult the churches before changing the law. The Church of England, Church of Scotland and Church of Ireland and the Roman Catholic Church in England and Wales and in Scotland and Ireland were subsequently consulted and were content for the statutory disqualifications to be removed.

COMMENTARY ON SECTIONS

Section 1: removal of disqualification of clergy

10. This section establishes (in *subsection (1)*) that a person who has been ordained or who is a Minister of religion is not disqualified from being elected to or sitting in the House of Commons. It accordingly displaces the House of Commons (Clergy Disqualification) Act 1801 and section 9 of the Roman Catholic Relief Act 1829, and ensures that any other rule of law which might prevent clergy sitting ceases to have effect. It makes provision, however, (in *subsection (2)*) for the continuing disqualification of any bishop who sits in the House of Lords as a Lord Spiritual. *Subsection (3)* then introduces two Schedules, which contain consequential amendments and repeals of statutory provisions relating to clergy disqualification.

Section 2: Short title, commencement and extent

11. The Act applies to the whole of the United Kingdom and came into force on Royal Assent.

Schedule 1: consequential amendments

12. The House of Commons Disqualification Act 1975 lists various offices the holders of which may not, during the period they hold those offices, become members of the House of Commons. Paragraph 1 of Schedule 1 adds a reference to a Lord Spiritual to the listed offices in order to disqualify a bishop who is by virtue of being a bishop, for the time being, a Lord Spiritual member of the House of Lords (and who, but for the Act, would be disqualified by the 1801 Act).
13. The remaining paragraphs of the Schedule amend statutes governing qualification for election to the European Parliament, the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly. These paragraphs ensure that the effect of the provisions that relate to disqualification from membership of those bodies remains unchanged.

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14. The amendments operate in a similar way. Each of the four statutes – the European Parliamentary Elections Act 1978, the Government of Wales Act 1998, the Scotland Act 1998 and the Northern Ireland Act 1998 – presently provide that a person who is disqualified from membership of the House of Commons other than by the House of Commons Disqualification Act 1975 is also disqualified from the legislative body in question. This would disqualify clergymen because they are disqualified from the Commons by the Acts of 1801 and 1829 mentioned above. In order that such clergymen can sit in these legislatures each of those four statutes goes on to provide expressly that a person who is ordained or who is a minister of any religious denomination is not disqualified from membership of that legislative body. It will no longer be necessary to make that express statement as regards the entitlement of clergy to be members of those bodies. But it does remain necessary to state that a person who is a Lord Spiritual can still be elected to those legislative bodies. In this respect, the position of Lords Spiritual reflects that of peers: they can be members of those legislative bodies notwithstanding their membership of the House of Lords.

Schedule 2: repeals

15. This Schedule repeals the House of Commons (Clergy Disqualification) Act 1801 and section 9 of the Roman Catholic Relief Act 1829, which disqualify certain clergy from membership of the House of Commons.

COMMENCEMENT

16. The Act came into effect on Royal Assent on 11 May 2001.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stages	Date	Hansard reference
House of Commons		
Introduction	25 January 2001	Vol 361, Col 1093
Second Reading	6 February 2001	Vol 362, Cols 803-874
Committee	1 March 2001	Vol 363, Cols 1055-1108
Report & Third Reading	1 March 2001	Vol 363, Cols 1108-1138
House of Lords		
Introduction	1 March 2001	Vol 622, Col 1354
Second Reading	27 March 2001	Vol 624, Cols 200-224
Committee	9 May 2001	Vol 624, Cols 2201-2204
Report & Third Reading	9 May 2001	Vol 624, Cols 2204

Royal Assent – 11 May 2001	House of Lords Hansard Vol 624, Col 2282
	House of Commons Hansard Vol 368, Col 406