

# House of Lords Reform Draft Bill



HM Government



# House of Lords Reform Draft Bill

Presented to Parliament  
by the Deputy Prime Minister  
by Command of Her Majesty

May 2011

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# Foreword

The Programme for Government set out the key values that underpin the Government's work: freedom, fairness and responsibility.

We have already made some important changes to move power from the centre to the people. We asked people how they wanted the House of Commons to be elected. We have introduced a Bill into Parliament to set the length of Parliamentary terms so that Prime Ministers can no longer play politics with the date of general elections. We are now publishing a draft Bill to change the House of Lords into a more democratically elected second chamber.

In a modern democracy it is important that those who make the laws of the land should be elected by those to whom those laws apply. The House of Lords performs its work well but lacks sufficient democratic authority.

The House of Lords and its existing members have served the country with distinction. However, reform of the House of Lords has been on the agenda for more than 100 years and many Governments have considered the complex issues which surround it but full reform has not yet been achieved.

This Government is committed to resolving these issues so that progress can be made. At the last election, all three main political parties were committed to reform of the House of Lords.

In the Programme for Government, we said:

"We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely there will be a grandfathering system for current Peers."

A cross-party Committee met seven times from June to December 2010. It considered all the issues related to reform of the House of Lords and reached agreement on a large number of issues, but differences in opinion remain on the size of the elected element and the type of electoral system.

The Government believes that the discussion on the future of the upper House should now be taken forward to a debate on the detail. We are, therefore, publishing a draft Bill for pre-legislative scrutiny with proposals for an 80% elected House of Lords but, in line with the Coalition Agreement, a wholly elected

House of Lords has not been ruled out. The draft Bill sets out elections using the Single Transferable Vote system (STV), but we recognise that a case can be made for other proportional systems too, such as the list system. We believe that our proposals will strengthen Parliament.

The Government recognises that Parliamentarians from both Houses of Parliament have a valuable contribution to play in shaping the eventual Bill which will be introduced into Parliament. It is an important step for the nation.

We today publish this White Paper and draft Bill for pre-legislative scrutiny and we hope that the two Houses will quickly establish a Joint Committee to consider and report on the draft Bill well before the end of the session. While the Joint Committee is responsible for the next steps, we today invite everyone's comments on the draft Bill, whether made to the Cabinet Office or in evidence to the Joint Committee.

We look forward to the report from the Joint Committee which we will consider with great care. We are both strongly persuaded that this is a unique opportunity for our country to instil greater democracy into our institutions and are fully committed to holding the first elections to the reformed House of Lords in 2015.



Rt Hon David Cameron MP  
Prime Minister



Rt Hon Nick Clegg MP  
Deputy Prime Minister

# Summary of the proposals

## Name

The name of the House of Lords has been retained for the purposes of the pre-legislative scrutiny process.

## Size

A reformed House of Lords of 300 members – wholly or mainly elected in line with the Coalition Agreement. The draft Bill provides for 240 elected and 60 appointed members, as well as 12 Bishops sitting as ex-officio members. We will consider a wholly elected chamber if that option is supported as the draft Bill is scrutinised.

## Functions

The reformed House of Lords would have the same functions as the current House. It would continue to scrutinise legislation, hold the Government to account and conduct investigations.

## Powers

We propose no change to the constitutional powers and privileges of the House once it is reformed, nor to the fundamental relationship with the House of Commons, which would remain the primary House of Parliament. That primacy rests partly in the Parliament Acts and in the financial privilege of the House of Commons.

## Term

A single non-renewable membership term of three normal election cycles – in practice (given 5 year fixed term Parliaments) that is likely to be 15 years.

## Timing of Elections

Elections to take place at the same time as general elections, subject to a caveat where a general election to the House of Commons takes place within 2 years of the last election to the reformed House of Lords.

Staggered elections so that a third of seats (80 seats) is contested at each election.

## **Electoral system**

Elections to the reformed House of Lords would use a proportional system. We propose the Single Transferable Vote System (STV), but the cross-party Committee examined alternatives including an open list system.

## **Appointed members**

In an 80% elected House of Lords, the appointed, independent, members would be nominated by a statutory Appointments Commission and recommended by the Prime Minister for appointment by The Queen. 20 members would be appointed at the time of each election to the reformed House of Lords, with the same term as elected members.

## **Link with the peerage**

The link between the award of a peerage and membership of the second House of Parliament would end. The peerage would revert to being an honour.

## **Transitional period**

A move to a smaller and mainly elected second chamber would not take place in one step but in three phases during which some existing peers would remain as transitional members.

## **Church of England Bishops**

In an 80% elected House of Lords, the Government proposes that, in the reformed House of Lords, there would be up to 12 places for representatives of the Church of England.

## **Salary and Allowances**

Members would receive a salary and allowances. Members would also be entitled to receive a pension and the pension fund would be administered by the Independent Parliamentary Standards Authority (IPSA).

## **Tax status**

Members of the House of Lords would continue to be deemed resident, ordinarily resident and domiciled (ROD) for tax purposes.

## **Disqualification**

Members of the reformed House of Lords would be subject to a disqualification regime modelled on that in the House of Commons.

## **Franchise**

The franchise for general elections would be extended to include members of the reformed House of Lords – so members could vote in House of Commons elections. The franchise for elections to the reformed House of Lords would mirror that for general elections to the House of Commons.

## Complementing the House of Commons

The House of Commons would remain the primary chamber and the reformed House of Lords would complement it. A number of key features of the reformed House would help achieve this aim:

- A long term for members of three normal Parliaments;
- A single non-renewable term;
- An appointed element (in an 80% elected House of Lords); and
- A different voting system for elections to the reformed House of Lords from that used for elections to the House of Commons.

These issues are covered in further detail overleaf.

# The proposals

## Name

1. The Government proposes to retain the name of the House of Lords, at least for the purposes of pre-legislative scrutiny. The cross-party Committee considered a wide range of names, including the Senate. However, the package of proposals in the White Paper represents incremental reform and, therefore, there is a logical argument for retaining the name of the House of Lords for the time being. The Government does not want discussion of the name to be a distraction from the more fundamental issues of the composition of the second chamber.

## Functions

2. The House of Lords plays an important role in our legislature and, as a second chamber, is a vital part of our constitutional arrangements.
3. The House of Lords shares responsibility for legislating with the House of Commons. Bills are debated and scrutinised in both Houses. The House of Lords has a reputation for the careful consideration of legislation and has the ability to delay and ask the Government and House of Commons to think again and, in some cases, offer alternative amendments for further consideration.
4. The House of Lords also plays a vital role in scrutinising the work of the Government and holding it to account for its decisions and activities. It does this by members asking oral and written questions, responding to Government statements and debating key issues.
5. Select Committees of the House of Lords conduct inquiries into matters of public policy and publish their findings to Parliament.
6. The Government believes that these functions should remain unchanged when the House of Lords is reformed and that it should continue this valuable work.

## Powers

7. The Government believes that the change in composition of the second chamber ought not to change the status of that chamber as a House of Parliament or the existing constitutional relationship between the two Houses of Parliament.
8. The relationship between the two Houses of Parliament is governed by statute and convention. The Parliament Acts of 1911 and 1949 provide the basic underpinning of that relationship and set out that the House of Lords is, ultimately, subordinate to the House of Commons. They provide that, in certain circumstances, legislation may be passed without the agreement of the House of Lords. The Government does not intend to amend the Parliament Acts or to alter the balance of power between the Houses of Parliament. The Parliament Acts are, however, a long-stop which are rarely resorted to: the relationship between the Houses is governed on a day to day basis by a series of conventions which have grown up over time. These include that the House of Lords should pass the legislative programme of the Government which commands the confidence of the House of Commons; the principle that the Government of the day can continue in office only if it retains the confidence of the House of Commons and the consequence that, whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully about rejecting a Bill which the Commons has approved; and the principle that the House of Lords will consider Government Bills in reasonable time. Most important, though, are the conventions which support the financial privileges of the House of Commons.
9. The Government's position is that these conventions have served the relationship between the Houses well and that they represent a delicate balance which has evolved over the years.
10. The Government believes that the powers of the second chamber and, in particular, the way in which they are exercised should not be extended and the primacy of the House of Commons should be preserved. The present balance between the two Houses as expressed by the principles set out above serves the legislative process well, and gives the second chamber the opportunity to make a substantive contribution while not at the same time undermining the relationship between the Government and the House of Commons.
11. The Government believes that clause 2 of the draft Bill is the best way of achieving this because it does not attempt to codify the existing powers of the Houses in legislation but rather, as now, accepts that the position is a matter of convention.

## Size and Composition

12. There are 789 members of the House of Lords<sup>1</sup>, but the average daily attendance in the 2009-2010 session was only 388 members. Whilst the total membership of the House of Lords is thus more than the House of Commons, the size of the "working house" is significantly smaller. In most other countries the second chamber is substantially smaller than the first chamber. The Government proposes that the reformed House of Lords would comprise 300 members. The Government expects members of the reformed House to be full-time Parliamentarians. 300 full-time members would therefore be well able to fulfil the same range of duties as the current average daily attendance of 388, given that the expectation at present is that many of the current members of the House, including those who do attend regularly, will have outside commitments.

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<sup>1</sup> As at 3 May 2011 excludes Members who are on leave of absence, are suspended, disqualified as senior members of the judiciary and disqualified as an MEP.

13. The Coalition Agreement said that we would develop proposals for a wholly or mainly elected second chamber. This is the fundamental democratic principle.
14. Many people, however, value the contribution to Parliament from independent, non party-political voices. The wisdom and experience of people who are pre-eminent in their field and have done great things can be of benefit to Parliament's consideration of legislation. These people would not consider seeking elected office and would not see themselves as politicians.
15. The draft Bill sets out our proposal for an 80% elected House. This enables the draft Bill to demonstrate how a partly appointed House would work but it is a draft and we will consider options including a wholly elected House.
16. It, therefore, provides that the reformed House would have 240 elected members and 60 appointed members. The Government also proposes that a maximum of 12 Church of England Bishops would sit as ex-officio members.
17. Adapting the provisions for a wholly elected reformed House of Lords, would mean amending the draft Bill in the following ways:-
  18. Clause 1 would be amended to provide that the composition in the first transitional period would be:
    - 100 elected members;
    - ministerial members;
    - Bishops and
    - the transitional members for that period.
  19. In the second transitional period the composition would be:
    - 200 elected members;
    - ministerial members;
    - Bishops and
    - the transitional members for that period.
  20. During each subsequent electoral period the reformed House of Lords would consist of 300 elected members and ministerial members. Clause 5 would be amended to provide for 100 members to be elected at each House of Lords election.
  21. The provisions on the Appointments Commission (Part 3, and Schedules 4 and 5) would be removed. Clauses 38 and 39 on disqualification of appointed members would be removed and other minor amendments would be made to the disqualification provisions in Part 7 to remove references to appointed members. Some similar consequential amendments would be needed to other provisions in the draft Bill.
  22. The Government is interested to hear people's views on this choice between a wholly or mainly elected House of Lords.

23. The Government proposes that the link with the peerage would be broken. Membership of the second chamber would no longer be dependent on the award of a peerage nor would membership confer a right to a peerage. The peerage would revert to being an honour.

## Term

24. The Government considers that serving a single term, with no prospect of re-election would enhance the independence of members of the reformed House of Lords. It would also reinforce the distinct role for members of the House of Lords, which is different from that of MPs. In order to attract able people, the Government recognises that the term would need to be sufficiently long. The Government therefore proposes that members should normally serve a single, non-renewable term of three normal Parliaments.
25. Elections would be for a third of the House at a time, with 80 elected members and 20 appointed members (if the House were 80% elected) entering the House after each election. This would ensure that members of the reformed House of Lords would never collectively have a more recent mandate than MPs. Staggered elections would also make it less likely that one particular party would gain an overall majority. It would also mean that the Government of the day would be unlikely to have a majority in both Houses.

## Timing of elections

26. The Government considers that elections to the reformed House of Lords should take place at the same time as elections to the House of Commons in order to maximise voter turnout and provide the least disruption to the work of Parliament and on grounds of efficiency. The Government considered holding elections to the reformed House of Lords at the same time as elections to the devolved legislatures, local authorities or to the European Parliament. However, historically the highest turnout tends to be at general elections, so holding elections to the House of Lords at the same time as elections to the House of Commons would maximise voter turnout. It would also mean that elections to the House of Lords would not disrupt the legislative programme with new members joining the reformed House partway through the consideration of legislation.
27. However, if there is an election to the House of Commons within two years of the previous election to the House of Lords, then there would be no House of Lords election at that time. As members' terms would be non-renewable, the Government considers it would be unfair to cut them unexpectedly short.

## Electoral System

28. The Coalition Agreement set out our commitment to a system of proportional representation for the reformed House of Lords. Proportional representation systems are designed to ensure the proportion of the available seats won by a given party corresponds closely to the proportion of votes cast for that party at the election. For example, under a proportional system a party with 30% of the votes cast at an election should win as close as possible to 30% of the seats available.
29. Proportional representation systems deliver this relationship between the proportion of the vote and the proportion of seats won because they are based on "multi-member constituencies" – that is, voters in each constituency return more than one representative.

30. The Government believes that a proportional representation (PR) system will help achieve its aspirations for a reformed second chamber – that it should perform the same role as at present, but have a clear democratic mandate. The Government wishes to protect the important link between constituents and their Member of Parliament in the Commons, and we believe that establishing larger, multi-member constituencies as the basis of representation in the reformed House of Lords will provide a role and mandate for members of the reformed second chamber that is complementary to the important work undertaken by MPs. A PR system is likely to result in no party having an overall majority which, in addition, should assist in ensuring that the reformed House of Lords as a whole considers issues from a different perspective to that of the House of Commons.
31. There are a number of PR systems that could be used for elections to the reformed House of Lords. The draft Bill sets out how a Single Transferable Vote (STV) system would operate for elections to the reformed House of Lords. STV elections are currently used in the UK in all Northern Ireland elections (except elections to the House of Commons) and for local elections in Scotland.
32. The individuals elected to the reformed House of Lords will serve a long term, and will inherit the important scrutiny role presently exercised by the House of Lords. Their role, and that of the reformed chamber, will be different from that of the House of Commons. For these reasons, it is important that the individuals are elected with a personal mandate from the electorate, distinct from that of their party.
33. STV has a number of advantages compared with other PR systems that suggest it could be the most effective in delivering that personal mandate. Under STV, votes are cast for individual candidates rather than parties, and candidates are elected on the strength of the votes they secure as individuals. This places more power in the hands of voters than under other types of PR system, such as some types of party list, where political parties can have the biggest say over the individual candidate that is eventually elected.
34. On balance, these factors lead the Government to propose the use of STV for elections to the House of Lords. However, all electoral systems have advantages and disadvantages, and the cross-party Committee discussed the case for an open list system under which the voter would have the option of being able to vote for a single individual candidate. The Government recognises that a case can be made for other proportional systems and the arrangements set out in the draft Bill to underpin the use of STV could be applied to an open list system.

## How STV would work

- 35. Under STV, voters are invited to rank candidates on the ballot paper in the order in which they would like them to be elected. Under the version of STV proposed, as long as a first preference is indicated the vote will be valid – a voter may simply write “1” next to a candidate. After that voters may express preferences for as many or as few candidates as they wish. Voters would not be required to vote for candidates representing only one party: they would be free to vote across parties and for independent candidates. There would be no option to vote for a party instead of an individual candidate.
- 36. To be elected, a candidate must achieve a target number of votes – known as the ‘quota’. The quota is calculated on the basis of the number of votes cast and the number of seats available. The quota, broadly speaking, is the proportion of the total vote that a candidate must achieve to ensure that he or she will at least win the last of the available seats; at that point, he or she has enough votes to be guaranteed election to one of the seats.
- 37. Candidates need only one more vote than the target (the quota) to be elected – any further votes above this level have no additional bearing on their election. For this reason, when a candidate achieves the target, their “surplus votes” – i.e. the difference between their total number of votes and the quota – are transferred to other candidates in accordance with the preferences expressed on the ballot papers. In this way, each successful individual candidate is elected only with the votes that they need, and those that they do not need can go on to have an impact on the result.
- 38. After the transfer of surplus votes from elected candidates to candidates who remain in the contest, a candidate that now achieves the quota is elected. If seats remain unfilled at this point, the candidate with the fewest votes is then eliminated, and their votes are redistributed to the remaining candidates according to the second or later preferences on those ballot papers. Any candidate now meeting the quota is elected. If seats remain their surplus votes are redistributed, and this process continues until all of the seats have been filled.

## Electoral Districts

- 39. As noted above, PR systems involve the use of constituencies, or districts, electing more than one member. Not every district would need to return the same number of candidates.
- 40. Since the reformed House of Lords would be elected in thirds, 80 seats<sup>2</sup> would be contested at each election. That is roughly one member for every 570,000 voters. Multi-member “Electoral Districts” will therefore be much larger than the current Parliamentary constituencies, and closer in size to the 12 regions used as constituencies for elections to the European Parliament.

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<sup>2</sup> In addition, vacant seats will also be contested – see section on Vacancies below.

- 41. Electoral Districts must have a sufficient number of seats to ensure proportionality (the degree to which the result reflects the votes cast), but not so many seats that it is difficult for voters to make an informed choice between candidates, particularly after the first few preferences.
- 42. The Government considers it practical where possible to start from the basis of existing boundaries in use for elections in the UK. Local authorities and administrative counties are well understood and have a sense of history and local connection. However, they are too small to be used as Electoral Districts. The twelve “Nations and Regions”<sup>13</sup> used for elections to the European Parliament will in some cases themselves be too large.
- 43. The Government therefore proposes that the STV Electoral Districts are formed of the nations, and, within England, groups of administrative counties, taking the existing nine regions as the starting point, but allowing for districts to cross the regional boundaries where necessary to ensure a sufficiently proportional result. This will mean districts comprising around 5 to 7 seats in England. There will be a floor of three seats to ensure a proportional result in Northern Ireland, as is the case for the European Parliamentary elections.
- 44. The Government considers that an independent committee of experts should be formed to decide which counties should be combined to form Electoral Districts. The committee would also make a recommendation as to the number of members that each constituency should return. The Government believes that the weight of a vote should be broadly equal for voters across the UK. This need not mean districts of the same size, because, unlike the House of Commons, the number of seats in each Electoral District may vary.
- 45. The committee’s Terms of Reference would be consulted on during the first part of pre-legislative scrutiny, but the committee will be established and set a deadline that will allow for their recommendations to form part of the final Bill introduced into Parliament.

#### Equally weighted votes

- 46. It would be necessary to check periodically that the districts finally agreed by Parliament continued to result in a broad equality in the potential weight of a vote across the country reflecting patterns of electorate distribution. The Government proposes that the Electoral Commission would conduct a periodic review after every third election to the reformed House of Lords – that is, after each full electoral “cycle”. If necessary, the Commission would make a recommendation that restored equality as far as possible between the districts. This would be done by ensuring the ratio of voters to representatives was as nearly as possible the same in all districts, using the Sainte-Laguë formula, widely accepted as the fairest way of conducting distributions of this kind. The relevant Minister would be required to present this to Parliament in the form of secondary legislation, requiring the approval of both Houses. This process is similar to that already used for the European Parliamentary elections.
- 47. Reviewing districts in this way would be more cost effective and simpler to implement, without compromising the principle of equality in the weight of a vote. It also reflects the decision to use counties as a building block. This proposal would mean that the Electoral District boundaries would not be re-drawn once they had been initially set, it would be the number of members per district which would change.

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<sup>13</sup> Northern Ireland, Scotland and Wales comprise a single region each; England is divided into 9 regions.

## Women in Parliament

- 48. There is widespread agreement that the balance between men and women members in Parliament needs to be improved. Research suggests that the choice of proportional representation should facilitate the election of women to the reformed House of Lords. However, parties also have an important role to play in ensuring that Parliament reflects the society that it serves.
- 49. Reform of the House of Lords is therefore an opportunity to consider how to increase the participation of women in Parliament. The political parties and the Government should consider how to achieve this.

## Franchise

- 50. The franchise for elections to the reformed House of Lords would reflect that for Westminster Parliamentary general elections. British, resident Irish and qualifying Commonwealth citizens would therefore be eligible to vote in elections to the reformed House of Lords, as would those entitled to vote in Parliamentary elections whilst overseas. Voters would be entitled to vote in the Electoral District containing the address in respect of which they are registered to vote in a Parliamentary constituency.
- 51. The Government proposes that all members of the reformed House of Lords should be entitled to vote in both House of Commons and reformed House of Lords elections. Peers who presently sit in the House of Lords are disqualified from voting in Parliamentary elections on the basis that, as they are able to make representations directly in Parliament, there is no case for them to vote to elect representatives. The Government therefore proposes that, since these reforms would end the automatic link between a peerage and membership of the second chamber, the disqualification from voting in UK Parliamentary elections by virtue of a peerage should be lifted completely (it has already been lifted for hereditary peers who are not members of the House of Lords). Peers (who are not otherwise disqualified from voting) would therefore be able to vote in elections both to the reformed House of Lords and to the House of Commons with effect from the first set of elections to the House of Lords, which will take place on the same day as elections to the Commons.

## Vacancies

- 52. It is the Government's intention that vacancies in the reformed House of Lords should not be left open until the end of the departing member's term, as this could mean that voters were under-represented for significant periods of time. However, unlike in the House of Commons, vacancies created by elected members of the reformed House of Lords would not be filled through by-elections. This is partly due to the fact that it would be necessary to replace members elected through a proportional system with a candidate elected on a majoritarian basis, and also because holding by-elections across larger Electoral Districts has the potential to result in significant costs.
- 53. Instead, the Government proposes that an elected member would be temporarily replaced by a substitute member until the next election. Under the STV system, if the departing member stood for election from a particular party, the substitute would be the candidate from the same party in that Electoral District, who, at the point the final seat in that district was awarded, had achieved the highest number of votes (whether first preferences or transferred votes) at the most recent election without gaining a seat. If this person does not take up the position, then the offer would revert to the person from that party with the next highest number of votes; should there be no

further candidates eligible from that party, the seat would go to the person outside that party who gained the highest number of votes without being elected. In the event that an independent member vacated his or her seat, the substitute membership would be offered first to the person, of any party or none, that achieved the highest number of votes without being elected. If no person takes up the position of substitute member, the vacancy would be left open until the next election.

54. The substitute member appointed through this process would hold the seat until the next election to the reformed House of Lords. If the original member's term had been due to conclude at that election, then the seat would be contested at that election in the normal way. If, however, the original member's term had been due to continue beyond that election for a further one or two electoral periods then an additional seat would be contested in the relevant Electoral District. The additional seat would be awarded last, to the candidate who would otherwise have had the highest number of votes without gaining a seat. This elected replacement would then serve a shortened term of one or two electoral periods, as the case may be, until the end of the original member's term. This arrangement would ensure that the size of the reformed House of Lords would remain consistent since the size of each electoral cohort would remain the same.

## Statutory Appointments Commission

55. The House of Lords Appointments Commission (HOLAC) was established in 2000 to recommend individuals for appointment as non party political peers and to vet nominations for life peers, including those nominated by the UK political parties. Since 2001 HOLAC has made recommendations on merit and against set criteria which include personal qualities of integrity, independence and the highest standards of public life.
56. If the reformed House of Lords is to contain appointed members, the Government proposes to establish an Appointments Commission on a statutory basis which would recommend 20 people for appointment at the same time as elected members are returned and people to replace appointed members who leave the chamber during their term. The Commission would be accountable to Parliament as its work would be overseen by the Joint Committee on the House of Lords Appointments Commission.
57. The Commission would be a body corporate and all its powers would be set in statute. It would set its own criteria and process of appointment but it would be under a statutory duty to publish the criteria of appointment and the details of the appointment process.
58. It is expected that appointed members would bring a non-party political perspective to the work carried out by the reformed House of Lords.
59. The Government proposes that the current arrangement on recommendations is to remain unchanged. The Commission would make nominations to the Prime Minister. Appointments would be made by The Queen on the recommendation of the Prime Minister.

## Commissioners

60. The Queen would appoint seven commissioners, including a Chair, to the statutory Appointments Commission. Appointments to the Commission would be based on merit.

- 61. The Government proposes that members of the House of Commons and Ministers should not be eligible for appointment as Commissioners. This would follow the long-held principle that it is not right for members of one House of Parliament to be involved in the business of the other (exclusive cognisance).
- 62. However, the Government considers that it is important that the Commission should have access to firsthand knowledge of how the second chamber works. We propose that there should be no ban on former and current members of the House of Lords or the reformed House of Lords serving as Commissioners.
- 63. The Commissioners would be appointed for a single non-renewable ten year term. A long term for Commissioners with no prospect of renewal would enable a high degree of independence in the exercise of their functions.
- 64. Following Addresses from both Houses of Parliament, it would also be possible for Commissioners to be removed from their role by The Queen on certain grounds.

#### The Joint Committee on the House of Lords Appointments Commission

- 65. The Joint Committee on the House of Lords Appointments Commission would oversee the work carried out by the Commission. The Committee would be composed of members of both Houses, in the case of the reformed House of Lords, members could be elected, appointed or transitional members. Although the Joint Committee would consist of members of both Houses, its appointment by statute means that it would not be a committee of Parliament.
- 66. In particular the Joint Committee would approve the Commission's income and expenditure; it would lay the Commission's annual report before Parliament, review and consequently approve the Code of Conduct of the Appointments Commission. It would be modelled on the Speaker's Committee for the Electoral Commission.

#### Ministers

- 67. The Government proposes that Ministers may be drawn from elected members of the reformed House of Lords and, in the transitional period, both elected members and transitional members. This would ensure that Government business in the reformed House of Lords would be managed by members belonging to the same political party that had formed the Government.
- 68. The Prime Minister should also be able to appoint a limited number of people to serve as Ministers who would be members of the reformed House of Lords only for the duration of their appointment. The draft Bill makes provision for the detailed arrangements to implement this to be set out in secondary legislation, though the Government is open to including this in the Bill itself.

#### Transition

- 69. The Government proposes a process of transition to the reformed House of Lords. During this period, some of the current members of the House of Lords would work alongside new elected and appointed members of the reformed House of Lords. The Government recognises that this would help the reformed House of Lords work effectively during this period.

70. The draft Bill sets out one option for the transitional period. However, the Government remains open to views on the exact process of transition. Other possible options are discussed below.

Option I set out in the draft Bill

71. The aim is to reduce the number of current members in parallel with the introduction of new elected and appointed members of the reformed House of Lords over three elections. This would provide a gradual handover from the old to the reformed House. By the time of the third election, the chamber would comprise only those members, apart from the Bishops, who have been either elected or appointed to sit in the reformed House of Lords.
72. Existing members of the House of Lords, except Bishops, who are selected to remain in the reformed House of Lords through a transitional period are to be known as transitional members. Within the limits set out in the draft Bill, it would be for the House of Lords to determine the procedures for selecting members to sit in the first and second transitional periods. Transitional members would not be replaced if they leave the reformed House of Lords.

First transitional period

73. The first transitional period would begin with the first election to the reformed House of Lords. 80 members would be elected and 20 members would be appointed by the statutory Appointments Commission for terms of three electoral periods. If the House were wholly elected, 100 members would be elected at this time.
74. At the beginning of the first transitional period, the maximum number of transitional members who may be selected would be two thirds of the existing peers. This would ensure that, during the passage of the Bill through Parliament, the maximum number of transitional members would be known. It would also allow the House of Lords to make the arrangements for selection of transitional members in advance of the first election to the reformed House of Lords, including the making of standing orders. This follows the system for the departure of hereditary peers following the House of Lords Act 1999.
75. In order to be eligible for selection a peer would have to be entitled to receive a writ of summons to attend the House of Lords immediately before dissolution of the last Parliament before the first election to the reformed House of Lords.
76. These members would have to be selected prior to the beginning of the first transitional period.

Second transitional period

77. At the time of the second election, a further 80 members would be elected and 20 would be appointed. If the House were wholly elected, a further 100 members would be elected at this time.
78. In order to be eligible for selection as transitional members for the second transitional period, members would have to be transitional members immediately before the dissolution of the Parliament of the first transitional period. The maximum number of transitional peers who would be selected would be one half of the maximum number who may be selected for the first transitional period. The selected members would remain as transitional members for the whole of the second transitional period. The selection would have to be made prior to the beginning of the second transitional period.

- 79. At the time of the third election, all the transitional members would leave.
- 80. There are two other options for the transitional process on which the Government would welcome the views of the Joint Committee.

#### Option 2

- 81. This option would allow all those eligible, and who chose to do so, to remain in the reformed House of Lords until the dissolution of Parliament immediately prior to the third election. No selection process to determine which peers are to remain in the chamber would be needed. Up until the third election former members of the House of Lords would probably continue to form a majority of the reformed House.
- 82. Their knowledge of the work of the House of Lords would be retained as new members joined. However, this would lead to a chamber with a very large membership, comprising all those members of the House of Lords eligible to remain plus 200 new members after the second election. This could result in a chamber of nearly 1000 members, unless this is reduced through resignation or retirement, as well as death.

#### Option 3

- 83. A third option would be to reduce the size of the reformed House of Lords to 300 members at the time of the first election. This would mean that the advantages of a smaller House could be realised immediately and would make clear that the House of Lords had been reformed.
- 84. 200 of the existing members of the House of Lords would remain at the time of the first election to the reformed House of Lords. They would be joined by 100 new members.
- 85. At the time of the second election to the reformed House of Lords the number of former members of the House of Lords would be further reduced to 100. This would mean that after the second election there would be 100 members who were formerly peers in the House of Lords and 200 new members.
- 86. All remaining former members of the House of Lords would leave immediately before the third election to the reformed House of Lords.

#### **Heditary Peers**

- 87. There would be no reserved places for hereditary peers in the reformed House of Lords, although hereditary peers could be selected to remain as transitional members. They could also stand for election or be considered for appointment to the reformed House of Lords.
- 88. The House of Lords Act 1999 provided for a system of by-elections which allowed hereditary peers to enter the House solely by virtue of their peerage. The system was established to ensure that the number of hereditary peers in the House of Lords remained at 90. On the death of a hereditary peer a by-election would be held allowing hereditary peers to seek entry to the House of Lords.
- 89. The Government proposes that there should be no further by-elections after the start of the transitional period. The draft Bill, therefore, repeals the House of Lords Act 1999.

90. The Earl Marshal and the Lord Great Chamberlain are the two hereditary offices of state. Both are presently held by hereditary peers. However, these office holders would not need to sit in the reformed House of Lords to fulfil their duties as members of the Royal Household.

## Church of England Bishops

91. Currently, the Lords Spiritual – the 2 Archbishops and 24 Bishops of the Church of England – have reserved places in the House of Lords. They do not sit for life, but only for their period as an Archbishop or Bishop of a diocese. Although historically they sit as independent members of the Lords they are widely regarded as representatives of the Church of England.
92. The Government proposes that in a fully reformed second chamber which had an appointed element there should continue to be a role for the established Church. However, in line with proposals for a reduction in the size of the second chamber, the Government proposes that the number of reserved places for Church of England Archbishops and Bishops should also be reduced, from 26 to a maximum of 12.
93. The Government proposes that transitional arrangements should also apply to the Bishops to allow a gradual reduction to take place. The Government believes that this arrangement would allow the Bishops to continue to contribute effectively to the reformed House of Lords.
94. The Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester hold a seat in the House of Lords as of right under the Bishoprics Act 1878. The Government proposes that they should be entitled to occupy reserved places in the reformed second chamber throughout the transitional period and in the fully reformed chamber for as long as they hold that named office. If one of these Archbishops or Bishops were to leave that office, then he would be replaced in the reformed House of Lords by the new holder of that office.
95. The other 7 places would be reserved for Bishops of dioceses in England. These Bishops would be selected to sit in the reformed House of Lords by the Church of England.

### First transitional period

96. Presently, in addition to the holders of the five named offices, there are 21 Church of England Bishops entitled to sit in the House of Lords, in order of seniority. It would be for the Church to select up to 16 of these 21 Bishops to remain in the House of Lords during the first transitional period. These members would have to be selected from those in the House of Lords who immediately before the dissolution of Parliament before the first election, would be entitled to sit as Bishops in the House of Lords.

### Second transitional period

97. At the time of the second election to the reformed House of Lords, it would be for the Church to select a maximum of 11 of the Bishops to remain throughout the second (and final) transitional period. They would be selected only if they had been in the reformed House of Lords immediately before the dissolution of the Parliament of the first transitional period.
98. At the time of the third election to the reformed House of Lords, it would be for the Church of England to select up to 7 of these Bishops to sit in the chamber.

Fully reformed chamber

99. For each subsequent electoral period, a maximum of 7 serving Church of England Bishops could be selected by the Church to sit in the reformed House of Lords. They would be able to be selected from those Bishops who were sitting in the reformed House of Lords at that time or serving Church of England Bishops not in the chamber, but they would not be the holder of a named office.
100. The Church would not be obliged to fill any of the places reserved for Bishops at the start of each transitional or electoral period. If however it chose to fill any of these seats, and a vacancy subsequently arose among them, the Church would be able to fill the vacancy only if not to do so would cause the number of Bishops (excluding holders of a named office) to fall below 7. The Church would be able to select any serving Bishop, except a named office holder, to fill the vacancy.
101. A vacancy would arise if a Bishop becomes one of the named office holders or ceases to be a Bishop, or resigns from the reformed House of Lords. If, at any time, one of the Bishops in the reformed House of Lords became the Bishop of a different diocese, he would continue to hold a reserved place.
102. The Bishops who would remain in the reformed House of Lords after the end of the transitional period would have the same speaking and voting rights as other members of the reformed House of Lords.
103. The Bishops would continue to sit in the reformed House of Lords on a different basis from other members. Currently, Bishops sit in the House of Lords by virtue of their being serving office holders within the Church of England. They attend on a rota basis as their episcopal duties allow. They are also subject to the Church's terms and conditions on remuneration and discipline. Therefore in the transitional period, and in a fully reformed chamber, the Government proposes that:
  - Bishops would not be entitled to a salary or pension in the reformed House of Lords;
  - Bishops would be exempt from the tax deeming provision;
  - Bishops would be entitled to claim allowances under the scheme administered by the IPSA for members of the reformed House of Lords;
  - They would be subject to the disqualification provision;
  - They would not be subject to the serious offence provision and those on expulsion and suspension as it is anticipated that such members would be subject to the disciplinary procedures established by the Church of England.

## Remuneration

104. The overall cost of the reformed House of Lords will depend to a significant degree on the pay and pensions of members, and their allowances (including staffing allowances). However, the number of members will be reduced to only 300 members, less than half its current size.
105. The draft Bill includes provisions on salaries and allowances for all members of the reformed House of Lords (excluding Bishops).

- 106. Current members of the House of Lords do not receive a salary. They are however, entitled to non-taxable allowances to cover expenses incurred while conducting their parliamentary duties. Certain members of the House of Lords are remunerated due to the additional positions held. These are the Lords Speaker, the Chairman of Committees, the Principal Deputy Chairman and Government Ministers.
- 107. The Government proposes that, in a reformed House of Lords, members would be entitled to a taxable salary as they would be full time Parliamentarians. It is also proposed that they would be entitled to receive a pension and allowances for expenses incurred in carrying out their parliamentary duties.
- 108. The Government proposes that members of the reformed House of Lords would be subject to the same independent regulatory regime as the House of Commons as provided by the IPSA.
- 109. The draft Bill provides for salaries to be paid to transitional members. The final decision on whether this was appropriate would be taken in the light of the transitional scheme and therefore the number of transitional members.

#### Salaries

- 110. The Parliamentary Standards Act 2009 (PSA 2009), as amended by the Constitutional Reform and Governance Act 2010 (CRAG Act 2010), made provision for MPs' salaries to be set and paid by the IPSA. The Government proposes that salary arrangements of members of the reformed House of Lords should be broadly similar to those which apply to members of the House of Commons.
- 111. The Government proposes that the IPSA should set and pay not only salaries of members of the House of Commons but also those of the members of the reformed House of Lords. The Government considers that the level of salary for a member of the reformed House of Lords should be lower than that of a member of the House of Commons but higher than those of members of the devolved legislatures and assemblies<sup>4</sup>. This would recognise that they would have responsibilities for UK-wide legislation but would not have constituency duties. However, it will be for the IPSA to set the level of salaries.
- 112. The IPSA would have freedom to make arrangements for the setting, payment and review of salaries and would have the duty, after the first determination, to consult a specific set of people and bodies in order to determine the level of pay.
- 113. A general review of salaries of the reformed House of Lords would be carried out in the first year after each House of Lords election and at any other time the IPSA considers it appropriate. It is also proposed that the IPSA would have the additional power to delegate its function of reviewing a salary determination to the Senior Salaries Review Body (SSRB).

#### Allowances

- 114. The Government proposes that members of the reformed House of Lords should be entitled to claim allowances for costs incurred while conducting their parliamentary duties.

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<sup>4</sup> The current salary for a Member of Parliament is £65,738; for a Member of the Scottish Parliament £57,521; for a Member of the Welsh Assembly, £53,852; and for a Member of the Northern Ireland Assembly £43,101 (period of 2009-2010).

- 115. It is also proposed that the allowances scheme would be set and run by the IPSA. The regime provided by the PSA 2009 as amended by the CRAG Act 2010 imposes on the IPSA the duty to revise and review allowances for members of the House of Commons at every qualifying general election.
- 116. The Government proposes that the IPSA's role in administering allowances would also be extended to the reformed House of Lords with reviews conducted after every reformed House of Lords election and whenever the IPSA considers it appropriate.

#### Governance

- 117. The Government proposes that the governance arrangements for the IPSA should be amended to take account of the fact that it would be dealing with the reformed House of Lords as well as the House of Commons.

#### Pensions

- 118. Currently, only Ministers and a small number of other office holders in the House of Lords receive a pension. The Government proposes that the pensions provisions for all transitional, elected and appointed members (but not Bishops) of the reformed House of Lords should mirror those available for members of the House of Commons. These provisions are not set out in the draft Bill. They would however be included in the Bill introduced into Parliament.
- 119. The Report of the Committee on Standards in Public Life: MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer, published in November 2009 recommended that the IPSA determine MPs' pensions and oversee their administration. The CRAG Act 2010 enacted this recommendation, although it has not yet been brought into force. The Act also made provision for the continuation of the Parliamentary Contributory Pension Fund (PCPF) out of which MPs' pensions, and those of Ministers and other office holders, are currently paid. It is intended that the provisions will be brought into force by 2012.
- 120. The Government proposes to extend the IPSA's remit to include members of the reformed House of Lords who are not already paid a pension out of the PCPF. The IPSA would therefore be required to make a pension scheme similar to the MPs' scheme provided for in the 2009 Act, containing provisions on the application of assets of the PCPF for the provision of members' pensions. The Act already provides for a separate Ministers' pension scheme for Ministers and other office holders (including members of the House of Lords who are already entitled to a pension). The Act requires this to be made by the Minister for the Civil Service.
- 121. When setting the appropriate pension levels the IPSA would consult the Senior Salaries Review Body and other relevant bodies.
- 122. As currently provided by the PSA 2009, a yearly Exchequer contribution would be paid into the Fund out of money provided by Parliament. The amount of the contribution would be calculated in accordance with the recommendations of the Government Actuary, which would report every three years.
- 123. The administration of the PCPF, including overseeing investment decisions, is entrusted to 10 trustees under the PSA 2009. The Government intends to consult the current trustees of the PCPF about the transitional arrangements which would be necessary to ensure continuity and fair representation on the board under its proposals.

124. The changes would be carried out in the context of the reform of pension provision in the wider public sector in the light of the findings and recommendations of the Independent Public Service Pension Commission chaired by Lord Hutton.

## Tax

125. Members of the reformed House of Lords would consider legislation that affects all aspects of life in the UK, including policies with significant public expenditure and therefore tax consequences. It is only right that members should be liable to pay the same tax as the vast majority of people in the UK. The requirement which already exists for all members of the House of Lords and all MPs to be resident, ordinarily resident and domiciled for tax purposes would therefore be extended to the members of the reformed House of Lords.
126. The draft Bill provides for a deeming provision which would apply to all members (except the Bishops) so that they would be liable to pay UK tax on the same basis as the majority of the population, regardless of actual tax status. Members would be deemed resident, ordinarily resident and domiciled (ROD) for the purposes of income tax, capital gains tax and inheritance tax. There would be an exception, during the transitional period, for any transitional members who are temporarily disqualified from sitting and voting because they hold judicial offices.
127. The provision would apply for the whole of each tax year in which the person is a member, from the start of the tax year in which membership commences, to the end of the tax year in which membership ceases.
128. The provision would make members liable to pay UK tax on their domestic and foreign income when it arises, subject to any relevant Double Taxation Agreements, for the whole of their period of office. Those who die while a member would be deemed ROD on their death and would be subject to normal UK inheritance tax provisions.

## Expulsion or suspension for misconduct

129. The draft Bill provides a power for the reformed House of Lords to make standing orders which allow it to suspend or expel any member (except the Bishops).
130. Under the power, the reformed House of Lords could make provisions broadly mirroring the sanctions available to the House of Commons in respect of misconduct by MPs, however it would not be restricted to doing so.
131. Although the House of Lords currently has a power to suspend a member, this is limited to the remainder of the Parliament within which the power is exercised. The Government proposes an enhanced power of suspension that does not have this limitation.
132. Expulsion would result in permanent loss of membership. By contrast, if a member was suspended the individual would not lose his or her membership, but would not be entitled to sit and vote for the period of the suspension. The member would lose his or her entitlement to receive writs of summons to attend the reformed House of Lords, and his or her rights under any previously issued writ of summons would no longer be exercisable.

133. As a suspended individual would continue to be a member, he or she would continue to be deemed resident, ordinarily resident and domiciled in the UK under the deeming provision on tax status.

## Resignation

134. The Government proposes that all members of the reformed House of Lords should have the right voluntarily to relinquish their membership at any time. We recognise that there are many unforeseen circumstances which may prevent members fulfilling an initial commitment to serve for a full term,
135. Appointed or elected members who resign would be replaced in accordance with the draft clauses on filling vacancies, so that their numbers are maintained at a constant level.
136. Transitional members, including those who resign, would not be replaced however because the rate of resignation is unlikely to be high enough to conflict with the overall aim of gradual removal of these members from the second chamber.
137. A member would resign by giving written notice to the Clerk of the Parliaments. They would cease to be a member of the reformed House of Lords on signing the written notice.

## Recall

138. The Government is committed to bringing forward legislation to introduce a power to recall MPs where they have engaged in serious wrongdoing.
139. The Government will also consider whether elected members of the reformed House of Lords should be subject to a similar system.

## Disqualification

140. The Government proposes that the disqualification regime for the reformed House of Lords should be similar to that of the House of Commons to ensure that there is a common standard governing membership of both Houses. The main purpose of the disqualification regime would be to ensure the fitness and propriety of members of the reformed House of Lords.
141. The draft Bill makes provision for the disqualification of persons from being elected or appointed to the reformed House of Lords on the following grounds:
- Age (a minimum of 18 years);
  - Nationality (Members are disqualified if they are not a British citizen, a citizen of the Republic of Ireland, or a citizen of a Commonwealth country who does not require leave to enter or remain in the UK, or who has indefinite leave to remain in the UK);
  - Holding a disqualifying office (matching the House of Commons regime);
  - Insolvency (applying if the person is subject to a bankruptcy restrictions order or undertaking or a debt relief restrictions order or undertaking);

- The person is imprisoned for more than 12 months for an offence committed in the UK or overseas;
- The person has previously been elected or appointed to the reformed House of Lords and has served a full term. This would ensure that members serve a single non-renewable term.

**142.** A person would be disqualified from being a transitional member on the grounds of nationality, insolvency or imprisonment for a serious offence.

**143.** In addition, the Government proposes that a person could not be a member of both Houses of Parliament at the same time.

**144.** The Government proposes that disqualification, due to an insolvency order in relation to a member or due to the serious offence condition being met by a member; could be lifted if:

- The member's membership had come to an end, in the first or second electoral period, and;
- A subsequent reversal of the insolvency order or the quashing of the conviction for a serious offence had taken place.

**145.** The exception would allow a person to be reconsidered for nomination as a candidate for election or for appointment to the reformed House of Lords for a full term (of three electoral periods).

### **Disqualification of former members of the reformed House of Lords for election as MPs**

**146.** The Government intends that the second chamber should continue to be a scrutinising and revising chamber, and should therefore attract individuals with different qualities from members of the House of Commons. It recognises however that an elected second chamber may attract the kind of candidates who typically seek election to the House of Commons, who if successful may try to build a political base in the reformed House of Lords with that intention. Appointed members and transitional members could also use their profile in the reformed House of Lords to their advantage in planning to move to the House of Commons.

**147.** The Government therefore proposes a time restriction to disqualify former members of the reformed House of Lords (except for the Bishops) from being elected to the House of Commons for a specified period of time after they cease to be members.

**148.** The restriction would bar a member of the reformed House of Lords who completes their term from being elected as a MP at the general election which immediately follows the day they cease to be a member. The former member would remain disqualified until immediately before the earliest date on which it is calculated that a scheduled general election could occur after that election.

**149.** A member of the reformed House of Lords who ceased membership early would be subject to exactly the same period of disqualification, from the day their membership ceases, so that they would be neither advantaged nor disadvantaged by leaving early.

**150.** There would be no equivalent time restriction for former MPs who wish to seek membership of the reformed House of Lords.

## Ceremonial and the Sovereign

151. Certain ceremonies take place in the House of Lords. Some questions will be matters for the reformed House of Lords, such as the introduction of new members and the wearing of robes in the presence of the Sovereign. Others are matters for the Crown, such as Royal Commissions for the opening and prorogation of Parliament and, most importantly, The Queen's Speech. The Government proposes similar continuity in ceremonial: once the House of Lords has been reformed, Parliament will comprise The Queen, the reformed House of Lords and the House of Commons. The Queen will continue to open sessions of Parliament in state from the Parliament Chamber; the House of Lords Chamber, as happens in other Commonwealth second chambers. The Earl Marshal and Lord Great Chamberlain will retain their duties but will perform them without being members of the reformed House of Lords. The question as to which member of the reformed House of Lords presents humble Addresses to The Queen will be one for the reformed House of Lords but the duty was performed by the Government Chief Whip (the Captain of the Gentlemen at Arms) when the Lord Chamberlain was not a member of the House of Lords.

## Political donations and spending rules

152. The Government anticipates that the regulatory regime covering donations and loans to members of the reformed House of Lords, and expenditure by parties and candidates at elections to the reformed House of Lords, would broadly reflect arrangements for MPs and elections to the House of Commons.
153. At present these controls are set out primarily in the Political Parties, Elections and Referendums Act 2000 ("PPERA", as amended) and the Representation of the People Act 1983. The Government has made clear its intention to pursue a detailed agreement on limiting donations and reforming party funding in order to remove big money from politics. This would result in change to the regulatory framework. The draft Bill therefore does not contain detailed provision on donation and spending rules, since proposals in this area will be developed consistent with wider policy. The Government will set these out in due course.

## Conclusion

154. This draft Bill marks the transformation of the House of Lords into a democratically legitimate second chamber. It provides our vision for the reform of the House of Lords. The Government looks forward to the results of the work of the Joint Committee which is undertaking pre-legislative scrutiny of the Bill. We will consider their report carefully, but remain committed to introducing a Bill for enactment in time to provide for the first elections in 2015.



# House of Lords Reform Bill

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Make provision about the membership of the House of Lords; to make provision removing the disqualification of peers from voting at elections to, or being members of, the House of Commons; to make provision about the disclaimer of life peerages; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### COMPOSITION OF THE HOUSE OF LORDS

#### 1 Composition of the House of Lords

- (1) In the first transitional period the House of Lords is to consist of—
  - (a) 80 elected members,
  - (b) 20 appointed members,
  - (c) up to 21 Lords Spiritual,
  - (d) any ministerial members, and
  - (e) the transitional members for that period.
- (2) In the second transitional period the House of Lords is to consist of—
  - (a) 160 elected members,
  - (b) 40 appointed members,
  - (c) up to 16 Lords Spiritual,
  - (d) any ministerial members, and
  - (e) the transitional members for that period.
- (3) In each subsequent electoral period the House of Lords is to consist of—
  - (a) 240 elected members,
  - (b) 60 appointed members,

- (c) up to 12 Lords Spiritual, and
  - (d) any ministerial members.
- (4) Accordingly, no-one is a member of the House of Lords by virtue of a peerage (and no-one is entitled by virtue of a peerage to receive writs of summons to attend the House of Lords).

## **2 General saving**

- (1) Nothing in the provisions of this Act about the membership of the House of Lords, or in any other provision of this Act—
  - (a) affects the status of the House of Lords as one of the two Houses of Parliament,
  - (b) affects the primacy of the House of Commons, or
  - (c) otherwise affects the powers, rights, privileges or jurisdiction of either House of Parliament, or the conventions governing the relationship between the two Houses.
- (2) Subsection (1)(c) is subject to—
  - (a) sections 36(1)(a) and 38(1)(a) (minimum age for elected and appointed members);
  - (b) sections 49 and 50 (resolutions that disqualification is to be disregarded);
  - (c) section 56 (standing orders about expulsion and suspension);
  - (d) paragraphs 3 and 5 of Schedule 6 (standing orders about selection of transitional members).
- (3) Nothing in the provisions of this Act affects the validity of anything begun before the provision comes into force (for any purpose) and completed afterwards.

## **3 Meaning of “first transitional period” etc**

- (1) The “first transitional period” is the electoral period which begins with the day after the polling day for the first House of Lords election.
- (2) The “second transitional period” is the electoral period which begins with the day after the polling day for the second House of Lords election.
- (3) An “electoral period” is a period which—
  - (a) begins with the day after the polling day for a House of Lords election, and
  - (b) ends with the polling day for the next House of Lords election.

## **PART 2**

### ELECTED MEMBERS

#### *House of Lords elections*

## **4 House of Lords elections**

- (1) A House of Lords election is to be held whenever there is a qualifying parliamentary general election.

- (2) The poll for the House of Lords election must be on the same day as the poll for the qualifying parliamentary general election.
- (3) The first qualifying parliamentary general election is the later of—
  - (a) the parliamentary general election following the dissolution of the Parliament in which this Act is passed;
  - (b) the first parliamentary general election the polling day for which is on or after 7 May 2015.
- (4) A subsequent parliamentary general election is a qualifying parliamentary general election if the polling day for that election is after the end of the period of two years beginning with the polling day for the previous qualifying parliamentary general election.

## 5 Ordinary elected members and the electoral districts

- (1) Eighty persons are to be returned as ordinary elected members of the House of Lords at each House of Lords election (referred to in this Act as “ordinary elected members”).
- (2) For the purposes of House of Lords elections the United Kingdom is divided into the electoral districts specified in Schedule 1.
- (3) Ordinary elected members are returned as ordinary elected members for an electoral district.
- (4) Schedule 2 (which provides for how many of the 80 ordinary elected members of the House of Lords are to be returned for each electoral district at a House of Lords election) has effect.

## 6 Ordinary elected member’s term of office

- (1) A person (“O”) who is returned as an ordinary elected member under section 5(1) is an ordinary elected member for the period which—
  - (a) begins with the day on which O is declared to be returned, and
  - (b) ends with the day on which the last (or only) Parliament of the third electoral period is dissolved.
- (2) The “third electoral period” means the third electoral period after the polling day for the House of Lords election at which O is returned.
- (3) O is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which O is an ordinary elected member.
- (4) Subsections (1) and (3) are subject to—
  - (a) any provision of this Act or another enactment relating to O’s membership of the House of Lords or O’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend O from its service.
- (5) If O ceases to be an ordinary elected member any writ of summons previously issued to O because of this section has no further effect (and O’s seat is vacant).

## **7 Voting system for House of Lords elections**

- (1) At each House of Lords election, the election in each electoral district is for the total number of elected members who are to be returned at that election for that district.
- (2) The total number of elected members who are to be returned at each House of Lords election for each electoral district consists of—
  - (a) the number of ordinary elected members who are to be returned for that district as provided for in Schedule 2, and
  - (b) such number of persons as may be required under section 13 (provision for filling vacancies) to be returned as replacement elected members for that district.
- (3) The system of election for the return of those elected members is to be a single transferable vote system under which—
  - (a) a vote is capable of being given so as to indicate the voter's order of preference for the candidates for election as elected members for the electoral district in question, and
  - (b) a vote is capable of being transferred to the next choice—
    - (i) when the vote is not required to give a prior choice the necessary quota of votes, or
    - (ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

## **8 Persons entitled to vote**

- (1) A person ("P") is entitled to vote as an elector at a House of Lords election in an electoral district if, on the polling day for the election—
  - (a) P would be entitled to vote as an elector at a parliamentary election in a parliamentary constituency wholly or partly comprised in the electoral district, and
  - (b) P has a qualifying address.
- (2) P has a qualifying address if—
  - (a) the address in respect of which P is registered in the relevant register of parliamentary electors is within the electoral district, or
  - (b) P's registration in the relevant register of parliamentary electors results from an overseas elector's declaration which specifies an address within the electoral district.
- (3) At a House of Lords election, a person is not entitled to vote—
  - (a) in more than one electoral district, or
  - (b) more than once in the same electoral district.
- (4) Subsection (1) is subject to any provision made by an order under section 9 (power to make provision about elections etc) which provides for alterations made after a specified date in a register of electors to be disregarded.

## **9 Power to make provision about elections etc**

- (1) The Minister may by order make provision as to—
  - (a) the conduct of House of Lords elections,

- (b) the questioning of a House of Lords election and the consequences of irregularities, and
  - (c) the return of substitute elected members of the House of Lords (see section 11).
- (2) The provision which may be made under subsection (1)(a) includes, in particular, provision—
- (a) about the registration of electors;
  - (b) for disregarding alterations in a register of electors;
  - (c) about the designation of persons as returning officers for each electoral district;
  - (d) conferring functions on those returning officers and on local returning officers;
  - (e) for the combination of polls at House of Lords elections and other elections;
  - (f) about the limitation of the election expenses of candidates;
  - (g) for securing that in a House of Lords election no person is a candidate for election in more than one electoral district and no person is a candidate for election who is an elected member;
  - (h) for limiting the number of persons who may be nominated as candidates for election in the name of a registered party in an electoral district to the number of elected members to be returned for that district in the election;
  - (i) about the order in which the names of candidates for election appear on the ballot paper;
  - (j) for the allocation of seats in the case of an equality of votes.
- (3) The provision that may be made under subsection (1)(c) includes, in particular, provision—
- (a) as to the questioning of the return of a substitute elected member and the consequences of irregularities;
  - (b) modifying Schedule 3 (procedure for returning substitute elected members).
- (4) An order under subsection (1) may—
- (a) apply or incorporate, with or without modifications or exceptions, any provision of or made under any enactment;
  - (b) modify any form contained in, or regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to House of Lords elections;
  - (c) modify Part 7 (disqualification), and in so far as may be necessary in consequence of such modifications of that Part, modify any other provision of this Act;
  - (d) so far as may be necessary in consequence of any provision made by this Act or an order under subsection (1), modify any provision made by or under any enactment relating to the registration of parliamentary electors or local government electors;
  - (e) include provision creating criminal offences.
- (5) The return of an elected member may be questioned only in accordance with provision made under subsection (1)(b) or (c) (whether by the application or

- incorporation of Part 3 of the Representation of the People Act 1983 or otherwise).
- (6) For the purposes of subsection (2)(d) “local returning officer” means a person who is, in relation to parliamentary elections, an acting returning officer (in England and Wales) or a returning officer (in Scotland).
  - (7) Where functions are conferred on a person under subsection (2)(d) in relation to an electoral district, the council of a relevant area which falls wholly or partly within that district must place the services of their officers at the person’s disposal for the purpose of assisting that person in the discharge of those functions.
  - (8) “Relevant area” means—
    - (a) a district or London borough in England,
    - (b) a county or county borough in Wales, and
    - (c) a local government area in Scotland.
  - (9) Section 26 of the Welsh Language Act 1993 (power to prescribe Welsh version) applies in relation to an order under this section as it applies in relation to Acts of Parliament.
  - (10) In this Act “registered party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000.

#### *Filling vacancies*

### **10 Vacancies overview**

- (1) Where there is a vacancy in the seat of an elected member (“E”) before the end of E’s expected term—
  - (a) section 11 makes provision for the return of a substitute elected member of the House of Lords in accordance with Schedule 3 to fill the vacancy in relation to the period before the next House of Lords election (or in certain cases the House of Lords election after that), and
  - (b) section 13 makes provision for the return of a replacement elected member of the House of Lords at that House of Lords election to fill the vacancy for the remainder of E’s expected term (if any).
- (2) Section 15 defines the expected term of an elected member for the purposes of this section.

### **11 Substitute elected members**

- (1) This section applies if there is a vacancy in the seat of an elected member (“E”) before the end of E’s expected term.
- (2) A person is to be returned as a substitute elected member of the House of Lords in accordance with Schedule 3 (referred to in this Act as a “substitute elected member”) to replace E.
- (3) This is subject to subsections (4) and (5).
- (4) E’s seat is to remain vacant until the next House of Lords election if, on the day when the vacancy occurs, the expected polling day for the next House of Lords election is before the end of the period of 6 months beginning with that day.

- (5) E's seat is to remain vacant until the next House of Lords election if under paragraph 4(4) or 5(2) of Schedule 3 the Speaker of the House of Lords is notified that E's seat has not been filled under that Schedule.
- (6) For the purposes of determining, on any day, the expected polling day for the next House of Lords election—
  - (a) if no order under section 1(5) of the Fixed-term Parliaments Act 2011 has been made before that day, assume that no such order will be made, and
  - (b) if no certificate has been issued by the Speaker of the House of Commons under section 2(1) or (2) of that Act before that day, assume that no such certificate will be issued.
- (7) Subsection (8) applies where—
  - (a) E is an ordinary elected member or a two-period replacement elected member, and
  - (b) the vacancy occurs during a dissolution period.
- (8) For the purposes of this section and Schedule 3, the vacancy is to be treated as occurring on the first day of the electoral period after the electoral period in which it actually occurs (and references to the “next House of Lords election” and the “last House of Lords election” are to be read accordingly).
- (9) Where E is an ordinary elected member, “dissolution period” means—
  - (a) the period beginning with the day after the day on which the last (or only) Parliament of E's first electoral period is dissolved, and ending with that electoral period, and
  - (b) the period beginning with the day after the day on which the last (or only) Parliament of E's second electoral period is dissolved, and ending with that electoral period.
- (10) Where E is a two-period replacement elected member, “dissolution period” means the period—
  - (a) beginning with the day after the day on which the last (or only) Parliament of E's first electoral period is dissolved, and
  - (b) ending with that electoral period.
- (11) “E's first electoral period” means the first electoral period after the polling day for the House of Lords election at which E was returned, and “E's second electoral period” means the second electoral period after that day.
- (12) Section 15 defines the expected term of an elected member for the purposes of this section and a “two-period replacement elected member”.

## **12 Substitute elected member's term of office**

- (1) A person (“S”) who is returned as a substitute elected member under section 11(2) is a substitute elected member for the period which—
  - (a) begins with the day on which the declaration is made by the returning officer under paragraph 3(5) of Schedule 3 that S is returned as a substitute elected member, and
  - (b) ends with the day on which the last (or only) Parliament of the electoral period in which S is so returned is dissolved.

- (2) S is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which S is a substitute elected member.
- (3) Subsections (1) and (2) are subject to—
  - (a) any provision of this Act or another enactment relating to S's membership of the House of Lords or S's entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend S from its service.
- (4) If S ceases to be a substitute elected member any writ of summons previously issued to S because of this section has no further effect (and S's seat is vacant).

### **13 Replacement elected members**

- (1) This section applies if—
  - (a) there is a vacancy in the seat of an elected member (“E”) before the end of E’s expected term,
  - (b) immediately before the vacancy occurred, E was an ordinary elected member or a two-period replacement elected member, and
  - (c) the vacancy occurs at a time which is during E’s initial period.
- (2) “E’s initial period” means—
  - (a) where E was an ordinary elected member, the period—
    - (i) beginning with the first electoral period after the polling day for the House of Lords election at which E was returned, and
    - (ii) ending with the day on which the last (or only) Parliament of the second electoral period after that polling day is dissolved;
  - (b) where E was a two-period replacement elected member, the period—
    - (i) beginning with the first electoral period after the polling day for the House of Lords election at which E was returned, and
    - (ii) ending with the day on which the last (or only) Parliament of that electoral period is dissolved.
- (3) At the relevant House of Lords election a person is to be returned as a replacement elected member of the House of Lords for the electoral district in question (referred to in this Act as a “replacement elected member”) in order to replace E.
- (4) The relevant House of Lords election is—
  - (a) the next House of Lords election after the vacancy in E’s seat occurs, or
  - (b) where E was an ordinary elected member and the vacancy occurs in E’s dissolution period, the House of Lords election the polling day for which is the last day of the electoral period mentioned in subsection (2)(a)(ii).
- (5) “E’s dissolution period” means the period—
  - (a) beginning with the day after the day on which the last (or only) Parliament of the electoral period mentioned in subsection (2)(a)(i) is dissolved, and
  - (b) ending with that electoral period.
- (6) When the seats of elected members are being filled in the count following the election, the seats for any replacement elected members are to be filled after the seats for the ordinary elected members.

- (7) Section 15 defines the expected term of an elected member for the purposes of this section and a “two-period replacement elected member”.

#### **14 Replacement elected member’s term of office**

- (1) A person (“R”) who is returned as a replacement elected member under section 13(3) is a replacement elected member for the period which—
  - (a) begins with the day on which R is declared to be returned, and
  - (b) ends with the last day of the expected term of the elected member whom R replaces.
- (2) R is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which R is a replacement elected member.
- (3) Subsections (1) and (2) are subject to—
  - (a) any provision of this Act or another enactment relating to R’s membership of the House of Lords or R’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend R from its service.
- (4) If R ceases to be a replacement elected member any writ of summons previously issued to R because of this section has no further effect (and R’s seat is vacant).
- (5) Section 15 defines the expected term of an elected member for the purposes of this section.

#### **15 Elected member’s “expected term”**

- (1) For the purposes of this section and sections 10 to 14, the expected term of an elected member is—
  - (a) in the case of an ordinary elected member, the period mentioned in section 6(1);
  - (b) in the case of a substitute elected member, the period mentioned in section 12(1);
  - (c) in the case of a replacement elected member, the period mentioned in section 14(1).
- (2) Where a person is returned as an elected member but the return is void because of section 37(1) or (2) (election of disqualified person), the person’s expected term is to be determined as if the return were not void.
- (3) In this Act a “one-period replacement elected member” means a replacement elected member whose expected term begins and ends in the same electoral period.
- (4) In this Act a “two-period replacement elected member” means a replacement elected member whose expected term begins in one electoral period and ends in the next electoral period.

## PART 3

### APPOINTED MEMBERS

*House of Lords Appointments Commission etc*

#### **16 The House of Lords Appointments Commission**

- (1) There is to be a body corporate known as the House of Lords Appointments Commission (referred to in this Act as “the Commission”).
- (2) Schedule 4 (which makes provision about the Commission) has effect.

#### **17 The Joint Committee on the House of Lords Appointments Commission**

- (1) There is to be a committee known as the Joint Committee on the House of Lords Appointments Commission (referred to in this Act as “the Joint Committee”).
- (2) Schedule 5 (which makes provision about the Joint Committee) has effect.

*Appointments at time of House of Lords election*

#### **18 Ordinary appointed members**

- (1) Twenty persons are to be appointed as ordinary appointed members of the House of Lords following each House of Lords election (referred to in this Act as “ordinary appointed members”).
- (2) The appointments are to be made by Her Majesty on the recommendation of the Prime Minister.
- (3) The Commission must during the relevant period recommend twenty persons to the Prime Minister for appointment.
- (4) The “relevant period” is the period of 14 days beginning with the day after the polling day for the House of Lords election.
- (5) The Prime Minister must as soon as reasonably practicable recommend each of those persons to Her Majesty for appointment (and may not recommend any other person).
- (6) This section is subject to sections 22 (modification of numbers) and 25 (withdrawal of recommendations).

#### **19 Ordinary appointed member’s term of office**

- (1) A person (“A”) who is appointed as an ordinary appointed member under section 18 is an ordinary appointed member for the period which—
  - (a) begins with the day of A’s appointment, and
  - (b) ends with the day on which the last (or only) Parliament of the third electoral period is dissolved.
- (2) The “third electoral period” means the third electoral period after the polling day for the House of Lords election in connection with which A is appointed.

- (3) A is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which A is an ordinary appointed member.
- (4) Subsections (1) and (3) are subject to—
  - (a) any provision of this Act or another enactment relating to A's membership of the House of Lords or A's entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend A from its service.
- (5) If A ceases to be an ordinary appointed member any writ of summons previously issued to A because of this section has no further effect.

*Filling vacancies*

## 20 Replacement appointed members

- (1) This section applies if a person (“A”) is appointed as an ordinary appointed member under section 18 or as a replacement appointed member under this section, and—
  - (a) A’s appointment is void because of section 39(2) (appointment of disqualified person), or
  - (b) A ceases to be a member of the House of Lords before the end of A’s expected term.
- (2) A person is to be appointed as a replacement appointed member of the House of Lords (referred to in this Act as a “replacement appointed member”) in order to replace A.
- (3) The appointment is to be made by Her Majesty on the recommendation of the Prime Minister.
- (4) The Commission must as soon as reasonably practicable recommend a person to the Prime Minister for appointment.
- (5) The Prime Minister must as soon as reasonably practicable recommend that person to Her Majesty for appointment (and may not recommend any other person).
- (6) If no-one has been appointed in A’s place before the end of A’s expected term, subsection (2) ceases to apply at the end of that term.
- (7) Subsection (8) applies if—
  - (a) A’s expected term is the period mentioned in section 21(3) (extended term of office), and
  - (b) A’s appointment is known by the Commission to be void, or A ceases to be a replacement appointed member, before the end of the polling day for the first House of Lords election during that period.
- (8) If no-one has been appointed in A’s place before the end of the polling day for that election, subsection (2) ceases to apply at the end of that day (instead of at the end of A’s expected term).
- (9) Section 23 defines the expected term of an appointed member for the purposes of this section.

- (10) This section is subject to section 25 (withdrawal of recommendations).

## **21 Replacement appointed member's term of office**

- (1) This section applies to a person ("R") who is appointed as a replacement appointed member under section 20 in order to replace another person ("A").
- (2) Subject to subsection (3), R is a replacement appointed member for the period which—
  - (a) begins with the day of R's appointment, and
  - (b) ends with the last day of A's expected term.
- (3) If subsection (2) would result in a period which begins and ends in the same electoral period and R does not fall within subsection (4), R is a replacement appointed member for the period which—
  - (a) begins with the day of R's appointment, and
  - (b) ends with the day on which the last (or only) Parliament of the third electoral period is dissolved.
- (4) R falls within this subsection if—
  - (a) R has previously been an elected member as a result of a previous return, or
  - (b) R has previously been an appointed member as a result of a previous appointment.
- (5) The "third electoral period" means the third electoral period after the polling day for the House of Lords election which follows the last day of A's expected term.
- (6) R is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which R is a replacement appointed member.
- (7) Subsections (2) to (6) are subject to—
  - (a) any provision of this Act or another enactment relating to R's membership of the House of Lords or R's entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend R from its service.
- (8) If R ceases to be a replacement appointed member any writ of summons previously issued to R because of this section has no further effect.
- (9) Section 23 defines the expected term of an appointed member for the purposes of this section.

## **22 Modification of numbers of ordinary appointed members**

- (1) This section applies in relation to a House of Lords election if there are any recent replacement appointed members on the day after the polling day for the election.
- (2) The number of persons mentioned in section 18(1) and (3) (appointments and recommendations of ordinary appointed members) is reduced by the number of those members.
- (3) A person is a recent replacement appointed member on the day after the polling day for the election if—

- (a) on that day the person is a replacement appointed member to whom section 21(3) (extended term of office) applies, and
- (b) the election is the first House of Lords election during the period mentioned in that provision.

## 23 Appointed member’s “expected term”

- (1) For the purposes of sections 20 and 21, the expected term of an appointed member is—
  - (a) in the case of an ordinary appointed member, the period mentioned in section 19(1);
  - (b) in the case of a replacement appointed member, the period mentioned in section 21(2) or (3).
- (2) Where a person is appointed as an appointed member but the appointment is void because of section 39(2) (appointment of disqualified person), the person’s expected term is to be determined as if the appointment were not void.

### *Supplementary provision*

## 24 Criteria and procedure for selection

- (1) The Commission is to select persons for recommendation under sections 18(3) and 20(4) on merit on the basis of fair and open competition.
- (2) In doing so it must take account of the principle that, although past or present party political activity or affiliation does not necessarily preclude selection, the role of an appointed member is to make a contribution to the work of the House of Lords which is not a party political contribution.
- (3) The Commission must not recommend a person (“P”) for appointment as an appointed member unless P has declared that—
  - (a) P is aware of the provisions of section 38 (disqualification from being an appointed member), and
  - (b) to the best of P’s knowledge and belief, P is not disqualified from being an appointed member.
- (4) The declaration is to be made at the time (or times) required by the Commission.
- (5) The Commission must prepare a scheme setting out (subject to subsections (1) to (3)) its criteria and procedures for selecting persons to recommend under sections 18(3) and 20(4).
- (6) The Commission must review the scheme regularly and revise it as appropriate.
- (7) The Commission must publish the scheme and any revision to it.

## 25 Withdrawal of recommendations

- (1) This section applies in relation to—
  - (a) a recommendation by the Commission under section 18(3) or 20(4);
  - (b) a recommendation by the Prime Minister under section 18(5) or 20(5).

- (2) If the disqualification condition is met –
  - (a) the person who made the recommendation must withdraw it, and
  - (b) the Commission must recommend another person to the Prime Minister for appointment as soon as reasonably practicable (“the new recommendation”).
- (3) The disqualification condition is met if, before the recommendation is acted upon, it appears to the person who made it that the person to whom it relates (“P”) is disqualified from being an appointed member by section 38.
- (4) A recommendation by the Commission is acted upon when the Prime Minister recommends P to Her Majesty for appointment.
- (5) A recommendation by the Prime Minister is acted upon when P is appointed by Her Majesty.
- (6) For the purposes of this Act (including this section) the new recommendation is to be treated as made –
  - (a) under section 18(3), where the withdrawn recommendation was made under section 18(3) or (5);
  - (b) under section 20(4), where the withdrawn recommendation was made under section 20(4) or (5).
- (7) Subsection (6)(a) applies even if the new recommendation is made after the end of the period mentioned in section 18(3).

#### PART 4

##### LORDS SPIRITUAL

###### *Named Lords Spiritual*

#### **26      Named Lords Spiritual**

- (1) A person (“N”) who holds one of the named offices is a member of the House of Lords (referred to in this Act as a “named Lord Spiritual”) for the period for which N holds that office.
- (2) For the purposes of this Act the “named offices” are –
  - (a) Archbishop of Canterbury;
  - (b) Archbishop of York;
  - (c) Bishop of London;
  - (d) Bishop of Durham;
  - (e) Bishop of Winchester.
- (3) N is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which N is a named Lord Spiritual.
- (4) Subsections (1) to (3) are subject to –
  - (a) any provision of this Act or another enactment relating to N’s membership of the House of Lords or N’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend N from its service.

- (5) If N ceases to be a named Lord Spiritual any writ of summons previously issued to N because of this section has no further effect.

*Ordinary Lords Spiritual: selection for electoral period*

## 27 Ordinary Lords Spiritual

- (1) For each electoral period the Church of England may select up to the maximum number of persons to be members of the House of Lords as ordinary Lords Spiritual (referred to in this Act as “ordinary Lords Spiritual”).
- (2) The maximum number of persons is—
  - (a) for the first transitional period, 16,
  - (b) for the second transitional period, 11, and
  - (c) for each subsequent electoral period, 7.
- (3) The persons selected must be bishops who do not hold one of the named offices.
- (4) In the case of the first and second transitional periods, the selection must be made before the beginning of the transitional period in question.
- (5) In the case of subsequent electoral periods, the selection may be made before the beginning of, or during, the electoral period in question.
- (6) The Church of England may make the selection in whatever way it considers appropriate.
- (7) The Secretary General must, before the beginning of each electoral period, notify the Clerk of the Parliaments of—
  - (a) whether any persons have been selected as ordinary Lords Spiritual for that period, and
  - (b) if they have, the persons selected.
- (8) The Secretary General must notify the Clerk of the Parliaments, as soon as reasonably practicable, of any person selected during an electoral period as an ordinary Lord Spiritual.
- (9) In this Act the “Secretary General” means the Secretary General of the General Synod of the Church of England.
- (10) Section 28 makes further provision about the selection of ordinary Lords Spiritual under this section for the first and second transitional periods.

## 28 Ordinary Lords Spiritual for first and second transitional periods

- (1) A person may only be selected under section 27 as an ordinary Lord Spiritual for the first transitional period if, immediately before the relevant Parliament is dissolved, the person is entitled by virtue of being a bishop to receive writs of summons to attend the House of Lords.
- (2) The “relevant Parliament” is the Parliament the dissolution of which is followed by the first House of Lords election.
- (3) In determining whether a person is entitled as mentioned in subsection (1), ignore section 427 of the Insolvency Act 1986 (no entitlement to writs of summons during bankruptcy etc).

- (4) A person may only be selected under section 27 as an ordinary Lord Spiritual for the second transitional period if, immediately before the last (or only) Parliament of the first transitional period is dissolved, the person is an ordinary Lord Spiritual.
- (5) But if the number of persons who may be selected under subsection (4) is less than 7, so many persons as will bring the number of ordinary Lords Spiritual for the second transitional period up to 7 may be selected from among the other bishops who do not hold one of the named offices.

## **29 Ordinary Lord Spiritual's term of office**

- (1) This section applies to a person (“O”) who is selected under section 27 as an ordinary Lord Spiritual for an electoral period.
- (2) Where O is selected before the beginning of the electoral period, O is an ordinary Lord Spiritual for the period which—
  - (a) begins with that electoral period, and
  - (b) ends with the day on which the last (or only) Parliament of that electoral period is dissolved.
- (3) Where O is selected during the electoral period, O is an ordinary Lord Spiritual for the period which—
  - (a) begins with the day on which the Clerk of the Parliaments receives the notification referred to in section 27(8), and
  - (b) ends with the day on which the last (or only) Parliament of that electoral period is dissolved.
- (4) O is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which O is an ordinary Lord Spiritual.
- (5) Subsections (2) to (4) are subject to—
  - (a) any provision of this Act or another enactment relating to O’s membership of the House of Lords or O’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend O from its service.
- (6) If O ceases to be an ordinary Lord Spiritual any writ of summons previously issued to O because of this section has no further effect.

*Ordinary Lords Spiritual: filling vacancies*

## **30 Ordinary Lords Spiritual: vacancies**

- (1) This section applies if a person (“O”) is selected as an ordinary Lord Spiritual under section 27 or this section, and—
  - (a) O’s selection is void because of section 41(4) (selection of disqualified person), or
  - (b) O ceases to be an ordinary Lord Spiritual before the end of O’s expected term.
- (2) The Church of England may select another person (“P”) as an ordinary Lord Spiritual in order to replace O.

- (3) P must be a bishop who does not hold one of the named offices.
- (4) The Church of England may make the selection in whatever way it considers appropriate.
- (5) The Secretary General must notify the Clerk of the Parliaments of any person selected as soon as reasonably practicable.
- (6) If no-one has been selected in O's place before the end of O's expected term, subsection (2) ceases to apply at the end of that term.
- (7) In the first and second transitional periods, subsections (2) to (5) do not apply unless there will be fewer than 7 ordinary Lords Spiritual if O is not replaced.
- (8) Section 32 defines the expected term of an ordinary Lord Spiritual for the purposes of this section.

### **31 Selection under section 30: member's term of office**

- (1) This section applies to a person ("P") who is selected as an ordinary Lord Spiritual under section 30 in order to replace another person ("O").
- (2) P is an ordinary Lord Spiritual for the period which—
  - (a) begins with the day on which the Clerk of the Parliaments receives the notification referred to in section 30(5), and
  - (b) ends with the last day of O's expected term.
- (3) P is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which P is an ordinary Lord Spiritual.
- (4) Subsections (2) and (3) are subject to—
  - (a) any provision of this Act or another enactment relating to P's membership of the House of Lords or P's entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend P from its service.
- (5) If P ceases to be an ordinary Lord Spiritual any writ of summons previously issued to P because of this section has no further effect.
- (6) Section 32 defines the expected term of an ordinary Lord Spiritual for the purposes of this section.

### **32 Ordinary Lord Spiritual's "expected term"**

- (1) For the purposes of sections 30 and 31, the expected term of an ordinary Lord Spiritual is—
  - (a) where the member is selected under section 27, the period mentioned in section 29(2) or (3);
  - (b) where the member is selected under section 30, the period mentioned in section 31(2).
- (2) Where a person is selected as an ordinary Lord Spiritual but the selection is void because of section 41(4) (selection of disqualified person), the person's expected term is to be determined as if the selection were not void.

*Supplementary provision***33 Ordinary Lords Spiritual: supplementary provision**

- (1) A person (“O”) who is an ordinary Lord Spiritual ceases to be an ordinary Lord Spiritual if O—
  - (a) is appointed to one of the named offices, or
  - (b) ceases to hold office as a bishop.
- (2) O does not cease to be an ordinary Lord Spiritual if O (without being appointed to a named office) becomes the bishop of a different diocese.

**PART 5****MINISTERIAL MEMBERS****34 Ministerial members**

- (1) Persons may be appointed as ministerial members of the House of Lords (referred to in this Act as “ministerial members”) in connection with their appointment as Ministers of the Crown.
- (2) Appointments under this section are to be made by Her Majesty on the recommendation of the Prime Minister.
- (3) A person (“M”) who is appointed as a ministerial member under this section is a ministerial member for the period which—
  - (a) begins with the day of M’s appointment as a ministerial member, and
  - (b) ends with the day on which M ceases to be a Minister of the Crown.
- (4) M is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which M is a ministerial member.
- (5) Subsections (3) and (4) are subject to—
  - (a) any provision of this Act or another enactment relating to M’s membership of the House of Lords or M’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend M from its service.
- (6) If M ceases to be a ministerial member any writ of summons previously issued to M because of this section has no further effect.
- (7) The Prime Minister may by order make provision as to—
  - (a) the appointment of ministerial members (subject to subsection (2)),
  - (b) the number of ministerial members,
  - (c) circumstances in which a person ceases to be a ministerial member,
  - (d) the disqualification of persons from being ministerial members,
  - (e) the disqualification of persons who are or have been ministerial members from being members of the House of Lords of another description,
  - (f) the payment of salaries and allowances to ministerial members under the Parliamentary Standards Act 2009.

- (8) An order under subsection (7) may modify any enactment (including this Act).

## PART 6

### TRANSITIONAL MEMBERS

#### 35 Transitional members

Schedule 6 (which makes provision about the number of transitional members for the first and second transitional periods, about their selection and other matters) has effect.

## PART 7

### DISQUALIFICATION

#### *Elected members*

#### 36 Disqualification from being an elected member

- (1) A person (“P”) is disqualified from being an elected member if—
  - (a) P has not reached the age of 18 on the day on which P is nominated as a candidate to be an elected member,
  - (b) P is disqualified from membership of the House of Lords by section 3 of the Act of Settlement, as modified by section 45,
  - (c) P is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
  - (d) P holds a disqualifying office for an elected member,
  - (e) an insolvency order is in force in relation to P (see section 46),
  - (f) the serious offence condition is met in relation to P (see section 47),
  - (g) P has previously been an elected member as a result of a previous return (subject to subsection (6) and section 48), or
  - (h) P has previously been an appointed member as a result of a previous appointment (subject to section 48).
- (2) A person is also disqualified from being an elected member for a particular electoral district if, under section 1(2) of the House of Commons Disqualification Act 1975 (disqualification of Lord-Lieutenants etc), the person is disqualified for membership of the House of Commons for any parliamentary constituency wholly or partly comprised in that electoral district.
- (3) A “disqualifying office for an elected member” is any office for the time being described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975, other than that of member of the House of Lords Appointments Commission (subject to subsection (4)).
- (4) If the House of Lords resolves that Part 2 or 3 of that Schedule is to be modified in its application to elected members by virtue of subsection (3), Her Majesty may by Order in Council modify the application of that Schedule accordingly.
- (5) For the purposes of this section “office” includes a post or employment.

- (6) P is not disqualified from being an elected member by subsection (1)(g) if—
  - (a) P has previously been an elected member as a result of only one previous return, and
  - (b) as a result of that return P was a substitute elected member or a one-period replacement elected member.
- (7) This section is subject to sections 49 and 50 (relief from disqualification).

### **37 Effect of disqualification under section 36**

- (1) If a person disqualified from being an elected member is returned as an elected member, the person’s return is void (and accordingly, any writ of summons issued to the person because of that return has no effect).
- (2) If a person disqualified from being an elected member for a particular electoral district is returned as an elected member for that electoral district, the person’s return is void (and accordingly, any writ of summons issued to the person because of that return has no effect).
- (3) Where subsection (1) or (2) applies to a person, the person’s seat is vacant.
- (4) An elected member (“E”) ceases to be an elected member if—
  - (a) E becomes disqualified from being an elected member, or
  - (b) E becomes disqualified from being an elected member for the electoral district for which E was returned.
- (5) This section is subject to sections 49 and 50 (relief from disqualification).

### *Appointed members*

### **38 Disqualification from being an appointed member**

- (1) A person (“P”) is disqualified from being an appointed member if—
  - (a) P has not reached the age of 18 on the day of P’s appointment as an appointed member,
  - (b) P is disqualified from membership of the House of Lords by section 3 of the Act of Settlement, as modified by section 45,
  - (c) P is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces and members of foreign legislatures),
  - (d) P holds a disqualifying office for an appointed member,
  - (e) an insolvency order is in force in relation to P (see section 46),
  - (f) the serious offence condition is met in relation to P (see section 47),
  - (g) P is an elected member,
  - (h) P has previously been an elected member as a result of a previous return (subject to subsection (5) and section 48), or
  - (i) P has previously been an appointed member as a result of a previous appointment (subject to section 48).
- (2) A “disqualifying office for an appointed member” is any office for the time being described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975, as it applies in relation to elected members (subject to subsection (3)).

- (3) An office within subsection (2) is not a disqualifying office for an appointed member if it is listed in an Order in Council made by Her Majesty under this subsection.
- (4) For the purposes of this section “office” includes a post or employment.
- (5) P is not disqualified from being an appointed member by subsection (1)(h) if—
  - (a) P has previously been an elected member as a result of only one previous return, and
  - (b) as a result of that return P was a substitute elected member or a one-period replacement elected member.
- (6) This section is subject to sections 49 and 50 (relief from disqualification).

### **39 Effect of disqualification under section 38**

- (1) Subsection (2) applies if a person who is appointed as an appointed member is disqualified from being such a member at the time when the person is appointed.
- (2) The person’s appointment is void (and accordingly any writ of summons issued to the person because of that appointment has no effect).
- (3) An appointed member (“A”) ceases to be an appointed member if A becomes disqualified from being an appointed member.
- (4) This section is subject to sections 49 and 50 (relief from disqualification).

### *Lords Spiritual*

### **40 Disqualification from being a Lord Spiritual**

- (1) A person (“P”) is disqualified from being a Lord Spiritual if P is disqualified from membership of the House of Lords by section 3 of the Act of Settlement.
- (2) A person is disqualified from being a Lord Spiritual if the person is an elected member or an appointed member.
- (3) This section is subject to section 49 (relief from disqualification).

### **41 Effect of disqualification under section 40**

- (1) Subsection (2) applies if a person who becomes the holder of one of the named offices is disqualified from being a Lord Spiritual at the time when the person becomes the holder of that office.
- (2) The person does not become a named Lord Spiritual by virtue of being the holder of that office (and accordingly any writ of summons issued to the person because of section 26 has no effect).
- (3) Subsection (4) applies if a person who is selected as an ordinary Lord Spiritual is disqualified from being such a member at the time when—
  - (a) the person is selected, or
  - (b) the person would (apart from this section) become an ordinary Lord Spiritual.

- (4) The person's selection is void (and accordingly any writ of summons issued to the person because of that selection has no effect).
- (5) A Lord Spiritual ("L") ceases to be a Lord Spiritual if L becomes disqualified from being a Lord Spiritual.
- (6) This section is subject to section 49 (relief from disqualification).

*Transitional members*

**42 Disqualification from being a transitional member**

- (1) A person ("P") is disqualified from being a transitional member if—
  - (a) P is disqualified from membership of the House of Lords by section 3 of the Act of Settlement,
  - (b) an insolvency order is in force in relation to P (see section 46), or
  - (c) the serious offence condition is met in relation to P (see section 47).
- (2) This section is subject to sections 49 and 50 (relief from disqualification).

**43 Effect of disqualification under section 42**

- (1) Subsections (2) and (3) apply if a person who is selected as a transitional member is disqualified from being such a member at the time when—
  - (a) the person is selected, or
  - (b) the person would (apart from this section) become a transitional member.
- (2) The person's selection is void (and accordingly any writ of summons issued to the person because of that selection has no effect).
- (3) No-one else is to be selected in the person's place.
- (4) A transitional member ("T") ceases to be a transitional member if T becomes disqualified from being a transitional member.
- (5) This section is subject to sections 49 and 50 (relief from disqualification).

**44 Holders of certain judicial offices disqualified from sitting or voting**

- (1) A transitional member is, while holding a disqualifying judicial office, disqualified from sitting or voting in—
  - (a) the House of Lords,
  - (b) a committee of the House of Lords, or
  - (c) a joint committee of both Houses of Parliament.
- (2) "Disqualifying judicial office" means any of the judicial offices specified in—
  - (a) Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975, or
  - (b) Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.
- (3) A transitional member who is disqualified under this section is not for that reason disqualified from receiving a writ of summons to attend the House of Lords, but any such writ is subject to this section.

*Definitions etc*

**45 Modification of Act of Settlement**

- (1) Section 3 of the Act of Settlement applies in relation to elected and appointed members with the following modifications.
- (2) In that section, the words from “That after the said limitation shall take effect” to “in trust for him.” (which impose certain disqualifications) do not apply to a person who is—
  - (a) a qualifying Commonwealth citizen, or
  - (b) a citizen of the Republic of Ireland.
- (3) For the purposes of subsection (2), a person is a qualifying Commonwealth citizen if the person is a Commonwealth citizen who—
  - (a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or
  - (b) is such a person but for the time being has (or is by virtue of any enactment to be treated as having) indefinite leave to remain within the meaning of that Act.
- (4) But a person is not a qualifying Commonwealth citizen by virtue of subsection (3)(a) if the person does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases).
- (5) In Schedule 7 to the British Nationality Act 1981, the entry relating to the Act of Settlement does not apply in relation to elected and appointed members.

**46 Meaning of “insolvency order” etc**

- (1) In this Act, an “insolvency order” means—
  - (a) a bankruptcy restrictions order or undertaking (but not an interim order) under a provision listed in subsection (2);
  - (b) a debt relief restrictions order or undertaking (but not an interim order) under Schedule 4ZB to the Insolvency Act 1986.
- (2) The provisions referred to in subsection (1)(a) are—
  - (a) Schedule 4A to the Insolvency Act 1986;
  - (b) section 56A or 56G of the Bankruptcy (Scotland) Act 1985;
  - (c) Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (3) It is irrelevant for the purposes of subsection (1) whether the order is made or the undertaking is accepted before, or on or after, the day on which this section comes into force.
- (4) If a court or the sheriff makes a bankruptcy restrictions order or interim order, or a debt relief restrictions order or an interim debt relief restrictions order, in respect of a member of the House of Lords under any of the provisions mentioned in subsection (1) or (2), the court or sheriff must notify the Speaker of the House of Lords.
- (5) If, under any of the provisions mentioned in subsection (1) or (2), the relevant authority accepts a bankruptcy restrictions undertaking, or a debt relief

restrictions undertaking, made by a member of the House of Lords, the relevant authority must notify the Speaker of the House of Lords.

- (6) “The relevant authority” means –
  - (a) in the case of a bankruptcy restrictions undertaking under Schedule 4A to the Insolvency Act 1986 or a debt relief restrictions undertaking, the Secretary of State,
  - (b) in the case of a bankruptcy restrictions undertaking under section 56G of the Bankruptcy (Scotland) Act 1985, the Accountant in Bankruptcy, and
  - (c) in the case of a bankruptcy restrictions undertaking under Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), the Department of Enterprise, Trade and Investment.

#### **47 Serious offence condition**

- (1) The serious offence condition is met in relation to a person (“P”) at any time if at that time P is imprisoned or detained (or would be if P were not unlawfully at large) –
  - (a) as a result of P having been convicted of an offence, and
  - (b) pursuant to a relevant sentence or order.
- (2) A “relevant sentence or order” is a sentence or order that P be imprisoned or detained for the offence mentioned in subsection (1)(a) indefinitely or for more than one year.
- (3) The cases covered by the serious offence condition include cases in which –
  - (a) P is convicted of an offence committed in or outside the United Kingdom;
  - (b) anything mentioned in subsection (1) happens outside the United Kingdom.
- (4) For the purposes of the serious offence condition an act punishable under the law of a country or territory outside the United Kingdom is an offence (however it is described in that law).
- (5) The reference in subsection (1)(a) to an offence is to an offence whenever committed (and regardless of when the person is convicted).

#### *Exceptions*

#### **48 Exception to disqualification under sections 36 and 38**

- (1) This section applies if –
  - (a) a person (“P”) who is a qualifying elected member or a qualifying appointed member ceases to be an elected or appointed member (as the case may be) in the initial period,
  - (b) that happens because P becomes disqualified under section 36(1)(e) or (f) or section 38(1)(e) or (f) (insolvency order is in force or serious offence condition is met), and
  - (c) subsequently, the insolvency order is annulled or subsection (9) (reversal of conviction etc) applies in relation to P.
- (2) Where P ceases to be an elected member –

- (a) P is not disqualified by section 36(1)(g) from being an elected member as a result of one subsequent return as an elected member;
  - (b) P is not disqualified by section 38(1)(h) from being an appointed member as a result of one subsequent appointment under section 18 or 20 (ordinary and replacement appointed members).
- (3) Where P ceases to be an appointed member—
- (a) P is not disqualified by section 36(1)(h) from being an elected member as a result of one subsequent return as an elected member;
  - (b) P is not disqualified by section 38(1)(i) from being an appointed member as a result of one subsequent appointment under section 18 or 20 (ordinary and replacement appointed members).
- (4) “Qualifying elected member” means an elected member who—
- (a) is an ordinary elected member or a two-period replacement elected member, and
  - (b) has not previously been an elected member or an appointed member as a result of a previous return or appointment.
- (5) “Qualifying appointed member” means an appointed member who has not previously been an elected member or an appointed member as a result of a previous return or appointment.
- (6) The “initial period” means—
- (a) in the case of a qualifying elected member, the first or second electoral period after the polling day for the House of Lords election at which P is returned, and
  - (b) in the case of a qualifying appointed member, the electoral period in which P is appointed as an appointed member and the following electoral period.
- (7) The reference in subsection (1)(c) to an insolvency order being annulled is to—
- (a) a bankruptcy restrictions order within section 46(1)(a) being annulled on an appeal against the making of the order,
  - (b) a bankruptcy restrictions order or undertaking within that provision being annulled under one of the provisions listed in subsection (8),
  - (c) a debt relief restrictions order within section 46(1)(b) being annulled on an appeal against the making of the order,
  - (d) a debt relief restrictions order or undertaking within that provision being annulled by a direction under paragraph 10 of Schedule 4ZB to the Insolvency Act 1986, or
  - (e) a debt relief restrictions undertaking within section 46(1)(b) being annulled under paragraph 9(3)(a) of Schedule 4ZB to that Act.
- (8) The provisions referred to in subsection (7)(b) are—
- (a) paragraph 9(3)(a) or 10 of Schedule 4A to the Insolvency Act 1986,
  - (b) section 56E(3)(a), 56G(5)(a) or 56J of the Bankruptcy (Scotland) Act 1985, or
  - (c) paragraph 9(3)(a) or 10 of Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (9) This subsection applies in relation to P if—
- (a) the conviction mentioned in section 47(1)(a) is quashed, or
  - (b) as a result of a determination that P should not have been sentenced or ordered to be imprisoned or detained for the offence indefinitely or for

more than one year, the sentence or order is changed so that the requirements of section 47(1)(b) are no longer met.

#### **49 Relief from disqualification: age, nationality, disqualifying office**

- (1) This section applies in relation to—
  - (a) disqualification on a listed ground from being an elected member (either generally or for a particular electoral district),
  - (b) disqualification on a listed ground from being an appointed member,
  - (c) disqualification on a listed ground from being a Lord Spiritual, and
  - (d) disqualification on a listed ground from being a transitional member.
- (2) If conditions A and B are met, the House of Lords may resolve that any disqualification incurred (or alleged to have been incurred) by a person on that ground is to be disregarded.
- (3) Condition A is met if it appears to the House of Lords that—
  - (a) in the case of the age listed ground, the person has reached the age of 18 on the day on which the resolution is passed, and
  - (b) in the case of any other listed ground, the ground no longer applies to the person.
- (4) Condition B is met if it appears to the House of Lords that it is proper to disregard any disqualification so incurred.
- (5) The effect of a resolution under subsection (2) is that the disqualification is to be treated as never having been incurred.
- (6) A “listed ground” is a ground within—
  - (a) in the case of an elected member, section 36(1)(a), (b), (c), or (d) or (2) (age, nationality, holding disqualifying offices etc);
  - (b) in the case of an appointed member, section 38(1)(a), (b), (c) or (d) (age, nationality, holding disqualifying offices etc);
  - (c) in the case of a Lord Spiritual, section 40(1) (nationality);
  - (d) in the case of a transitional member, section 42(1)(a) (nationality).
- (7) “The age listed ground” is the ground within section 36(1)(a) or 38(1)(a).
- (8) A resolution under this section does not—
  - (a) affect any proceedings on an election petition, or
  - (b) enable the House of Lords to disregard any disqualification which has been established in such proceedings.
- (9) An “election petition” means—
  - (a) an election petition presented in pursuance of Part 3 of the Representation of the People Act 1983 as applied by or incorporated in an order under section 9 (power to make provision about elections etc), or
  - (b) any procedure under such an order which is similar to such a petition.

#### **50 Relief from disqualification: serious offence condition**

- (1) This section applies in relation to disqualification under—
  - (a) section 36(1)(f) (serious offence condition for elected members),
  - (b) section 38(1)(f) (serious offence condition for appointed members), and

- (c) section 42(1)(c) (serious offence condition for transitional members), where the serious offence condition is met (or alleged to have been met) by virtue of a sentence or order given or made outside the United Kingdom.
- (2) The House of Lords may resolve that any disqualification incurred (or alleged to have been incurred) because of that sentence or order should be disregarded.
- (3) It may do so only if it appears to the House of Lords that it is proper to disregard any disqualification so incurred.
- (4) The effect of a resolution under subsection (2) is that the disqualification is to be treated as never having been incurred.
- (5) A resolution under this section does not—
  - (a) affect any proceedings on an election petition, or
  - (b) enable the House of Lords to disregard any disqualification which has been established in such proceedings.
- (6) In this section “election petition” has the meaning given by section 49.

#### *Disputes*

### **51 Jurisdiction of Privy Council as to disqualification**

- (1) A person may apply to Her Majesty in Council for a declaration that a person purporting to be an elected member for an electoral district—
  - (a) is disqualified on one or more listed grounds from being an elected member (either generally or for that electoral district), or
  - (b) was so disqualified at the time when, or at some time since, the person was returned as an elected member.
- (2) A person may apply to Her Majesty in Council for a declaration that a person purporting to be an appointed member—
  - (a) is disqualified on one or more listed grounds from being an appointed member, or
  - (b) was so disqualified at the time when, or at some time since, the person was appointed as an appointed member.
- (3) A person may apply to Her Majesty in Council for a declaration that a person purporting to be a Lord Spiritual—
  - (a) is disqualified on a listed ground from being a Lord Spiritual, or
  - (b) was so disqualified at the time when, or at some time since, the person became a Lord Spiritual.
- (4) A person may apply to Her Majesty in Council for a declaration that a person purporting to be a transitional member—
  - (a) is disqualified on a listed ground from being a transitional member, or
  - (b) was so disqualified at the time when, or at some time since, the person became a transitional member.
- (5) An application under this section must be in accordance with such rules as Her Majesty in Council may prescribe.
- (6) Section 3 of the Judicial Committee Act 1833 (reference to the Judicial Committee of the Privy Council of appeals to Her Majesty in Council) applies

to an application under this section as it applies to an appeal to Her Majesty in Council from a court.

- (7) Where an application is made under this section—
  - (a) the person in respect of whom the application is made is to be the respondent, and
  - (b) the applicant must give such security for the costs of the proceedings as the Judicial Committee may direct.
- (8) The amount of the security may not exceed £5,000 or such other sum as the Minister may specify by order.
- (9) No declaration is to be made under this section in respect of a person in relation to a listed ground if—
  - (a) in the case of an elected member, the ground subsisted at the time of the person’s return as an elected member and an election petition is pending or has been tried in which the person’s disqualification on that ground is or was an issue, or
  - (b) a resolution of the House of Lords under section 49 requires that any disqualification incurred by the person on that ground is to be disregarded.
- (10) In this section “listed ground” and “election petition” have the meaning given by section 49.

## **52 Power to direct an appropriate court to try issues of fact**

- (1) For the purpose of determining any issue of fact arising on an application under section 51, the Judicial Committee may direct the issue to be tried in an appropriate court.
- (2) “Appropriate court” means, in the case of an application under section 51(1)—
  - (a) if the relevant electoral district is in England and Wales, the High Court,
  - (b) if the relevant electoral district is in Scotland, the Court of Session, or
  - (c) if the relevant electoral district is in Northern Ireland, the High Court in Northern Ireland.
- (3) “Relevant electoral district” means the electoral district for which the respondent purports to be an elected member.
- (4) “Appropriate court” means, in the case of an application under section 51(2), (3) or (4), whichever of the courts mentioned in subsection (2) the Judicial Committee thinks appropriate.
- (5) Where a direction is given under subsection (1), the decision of the appropriate court is final.

*Restrictions on membership of the House of Commons*

## **53 Members of the House of Lords disqualified from being MPs**

In section 1(1) of the House of Commons Disqualification Act 1975 (disqualification for membership of the House of Commons) for paragraph (za) substitute—

“(za) is a member of the House of Lords;”.

#### **54 Bar on standing for election to both Houses at the same time**

- (1) A person may not be both—
  - (a) a candidate at a House of Lords election to be an elected member for an electoral district, and
  - (b) a candidate at the relevant parliamentary general election to be the member of Parliament for a parliamentary constituency.
- (2) The relevant parliamentary general election is the parliamentary general election the day of the poll for which is the same as the day of the poll for the House of Lords election.
- (3) Amend the Representation of the People Act 1983 as follows.
- (4) In section 65A(1A) (making false statements in candidate's consent to nomination a corrupt practice)—
  - (a) omit “or” at the end of paragraph (b), and
  - (b) after paragraph (c) insert “, or
    - (d) a statement that he is not a candidate at a House of Lords election the day of the poll for which is the same as the day of the poll for the election to which the consent relates.”
- (5) In paragraph 8(3) of Schedule 1 (declarations to be made by candidate on consenting to nomination for election) after paragraph (c) insert—
 

“(d) shall state that he is not a candidate at a House of Lords election the day of the poll for which is the same as the day of the poll for the election to which the consent relates.”

#### **55 Restriction on former members being elected as MPs**

- (1) A former member of the House of Lords (“P”) is disqualified from being elected to the House of Commons at a parliamentary election the polling day for which falls during the disqualification period.
- (2) The disqualification period is the period of 4 years and 1 month beginning with the day on which P ceased (or last ceased) to be a member of the House of Lords.
- (3) This section does not apply in relation to membership of the House of Lords—
  - (a) before the beginning of the first transitional period, or
  - (b) as a Lord Spiritual.

### **PART 8**

#### **GENERAL PROVISION ABOUT MEMBERSHIP**

##### *Expulsion, suspension and resignation*

#### **56 Expulsion and suspension**

- (1) Standing orders of the House of Lords may make provision under which the House of Lords may by resolution—
  - (a) expel a member of the House of Lords, or
  - (b) suspend a member of the House of Lords for the period specified in the resolution.

- (2) A person expelled under this section ceases to be a member of the House of Lords.
- (3) A person suspended under this section remains a member of the House of Lords during the period of suspension, but during that period the person—
  - (a) is not entitled to receive writs of summons to attend the House of Lords, and
  - (b) despite any writ of summons previously issued to the person, is disqualified from sitting or voting in the House of Lords, a committee of the House of Lords or a joint committee of both Houses of Parliament.
- (4) A resolution for the purposes of subsection (1) must specify—
  - (a) the date or dates on which, or
  - (b) the period or periods during which, in the House’s opinion, the matters giving rise to the resolution occurred.
- (5) A date specified under subsection (4) must not be earlier than the relevant date.
- (6) A period specified under subsection (4) must not start before the relevant date.
- (7) The “relevant date”, in relation to a member of the House of Lords, is—
  - (a) the date on which the person first became a member of the House of Lords, or
  - (b) where that date is before the beginning of the first transitional period, the first date on or after the first day of that period on which the person was a member of the House of Lords.
- (8) This section does not apply in relation to Lords Spiritual.

## **57 Resignation**

- (1) A member of the House of Lords (“M”) may at any time resign from the House of Lords.
- (2) M resigns by notifying the Clerk of the Parliaments of M’s resignation.
- (3) The notice must be signed by M and by two persons as witnesses.
- (4) As soon as reasonably practicable after receiving the notice, the Clerk of the Parliaments must—
  - (a) sign a certificate of receipt, and
  - (b) send a copy of it to M and the Clerk of the Crown in Chancery.
- (5) M ceases to be a member of the House of Lords on signature of the certificate.

## *Proceedings*

## **58 Proceedings**

The proceedings of the House of Lords are not to be called into question because of—

- (a) a vacancy among the members, or
- (b) the participation of a person who should not be participating.

*Remuneration etc*

**59 Salaries and allowances**

- (1) In the Parliamentary Standards Act 2009, after section 7 insert –

*“Salaries and allowances for members of the House of Lords*

**7A Salaries of members of the House of Lords**

- (1) Members of the House of Lords are to receive a salary in respect of each relevant Parliament.
- (2) The salaries are to be paid by the IPSA.
- (3) Salaries are to be paid on a monthly basis in arrears.
- (4) The amounts of the salaries are to be determined by the IPSA (see section 7B).
- (5) “Relevant Parliament”, in relation to a member of the House of Lords (“M”), means each Parliament –
  - (a) which meets during the period for which M is a member of the House of Lords, and
  - (b) in which M makes and subscribes the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).
- (6) Where a salary is payable to M in respect of a Parliament, it is payable for the period which –
  - (a) begins with the day after the day of the poll for the preceding parliamentary general election, and
  - (b) ends with the day of the poll for the parliamentary general election which follows the dissolution of that Parliament.
- (7) But no salary is payable to M –
  - (a) where M is a substitute elected member or a replacement appointed member, for any period before the day on which M becomes such a member;
  - (b) where M ceases to be a member before the end of M’s expected term, for any period after the day on which M ceases to be a member.
- (8) M’s “expected term” –
  - (a) where M is an elected member, has the meaning given by section 15 of the House of Lords Reform Act 2011,
  - (b) where M is an appointed member, has the meaning given by section 23 of that Act, and
  - (c) where M is a transitional member, means the period mentioned in paragraph 6(1) of Schedule 6 to that Act.
- (9) The duty of the IPSA to pay a salary to a member is subject to anything done in relation to the member in the exercise of the disciplinary powers of the House of Lords.
- (10) This section does not apply in relation to Lords Spiritual.

- (11) In this section the following expressions have the same meaning as in the House of Lords Reform Act 2011 –
- “appointed member”;
  - “elected member”;
  - “Lord Spiritual”;
  - “replacement appointed member”;
  - “substitute elected member”;
  - “transitional member”.

## **7B Determination of salaries of members of the House of Lords**

- (1) This section is about determinations under section 7A(4).
- (2) A determination may provide for higher salaries to be payable to members while holding an office or position specified for the purposes of this subsection in a resolution of the House of Lords.
- (3) A determination by virtue of subsection (2) may make different provision for different offices or positions or different classes of member (and may include exceptions).
- (4) A determination may include a formula or other mechanism for adjusting salaries from time to time.
- (5) A determination may have retrospective effect.
- (6) The IPSA must review the current determination (and make a new determination as appropriate) –
  - (a) in the first year after each House of Lords election (other than the first House of Lords election);
  - (b) at any other time it considers appropriate.
- (7) In reviewing a determination (and before making the first determination) the IPSA must consult –
  - (a) the Review Body on Senior Salaries,
  - (b) persons appearing to the IPSA to represent persons likely to be affected by the determination or the review,
  - (c) the Minister for the Civil Service,
  - (d) the Treasury, and
  - (e) any other person the IPSA considers appropriate.
- (8) After making a determination, the IPSA must publish in a way it considers appropriate –
  - (a) the determination, and
  - (b) a statement of how it arrived at the determination.
- (9) If the IPSA reviews the current determination but decides not to make a new determination, it must publish in a way it considers appropriate a statement of how it arrived at that decision.
- (10) The IPSA may delegate to the Review Body on Senior Salaries its function of reviewing a determination (but not its function of deciding whether or not to make a new determination).

## 7C House of Lords allowances scheme

- (1) The IPSA is to pay allowances to members of the House of Lords in accordance with the House of Lords allowances scheme.
- (2) In this Act “the House of Lords allowances scheme” means the scheme prepared under this section as it is in effect for the time being.
- (3) The IPSA must—
  - (a) prepare the scheme;
  - (b) review the scheme regularly and revise it as appropriate.
- (4) In preparing or revising the scheme, the IPSA must consult—
  - (a) the Speaker of the House of Lords,
  - (b) the Committee on Standards in Public Life,
  - (c) the Leader of the House of Lords,
  - (d) any committee of the House of Lords nominated by the Speaker of the House of Lords,
  - (e) members of the House of Lords,
  - (f) the Review Body on Senior Salaries,
  - (g) Her Majesty’s Revenue and Customs,
  - (h) the Treasury, and
  - (i) any other person the IPSA considers appropriate.
- (5) The Speaker of the House of Lords must lay the scheme (or revision) before the House of Lords.
- (6) The IPSA must publish in a way it considers appropriate—
  - (a) the scheme (or revision), and
  - (b) a statement of its reasons for adopting that scheme (or making that revision).
- (7) The scheme (or revision) comes into effect on the day specified in the scheme (or revision).
- (8) The scheme may, for example—
  - (a) provide for allowances to be payable in respect of specified kinds of expenditure or in specified circumstances;
  - (b) provide for allowances to be payable only on specified conditions (such as a condition that claims for allowances must be supported by documentary evidence);
  - (c) impose limits on the amounts that may be paid.
- (9) The scheme may provide for allowances to be payable in connection with a person’s ceasing to be a member of the House of Lords; and in relation to any such allowances, references in this Act to a member of the House of Lords include a former member of the House of Lords.
- (10) Any duty of the IPSA to pay an allowance to a member is subject to anything done in relation to the member in the exercise of the disciplinary powers of the House of Lords.
- (11) This section does not apply in relation to the provision of pensions for or in respect of persons with service as a member of the House of Lords.

#### **7D Dealing with claims under the scheme**

- (1) No allowance is to be paid to a member of the House of Lords under the House of Lords allowances scheme unless a claim for the allowance has been made to the IPSA.
- (2) The claim must be made by the member (except where the scheme provides otherwise).
- (3) On receipt of a claim, the IPSA must—
  - (a) determine whether to allow or refuse the claim, and
  - (b) if it is allowed, determine how much of the amount claimed is to be allowed and pay it accordingly.
- (4) The House of Lords allowances scheme may include—
  - (a) further provision about how claims are to be dealt with;
  - (b) provision for deducting amounts within subsection (5) from allowances payable under the scheme or salaries payable under section 7A;
  - (c) provision about how such deductions, and deductions under paragraph 5 or 12 of Schedule 4, are to be made.
- (5) This subsection applies to amounts which a member (under section 9(8) or otherwise) has agreed to repay, in respect of amounts paid to the member under the House of Lords allowances scheme that should not have been allowed.
- (6) The scheme may provide for an allowance to which a member is entitled under the scheme to be paid to another person at the member's direction; and references in this Act to the payment of an allowance to a member are to be read accordingly.
- (7) The IPSA must publish such information as it considers appropriate in respect of—
  - (a) each claim made under or by virtue of this section, and
  - (b) each payment of an allowance by the IPSA under or by virtue of this section.
- (8) The IPSA must publish the information at times it considers appropriate and in a way it considers appropriate.
- (9) The IPSA must determine procedures to be followed by the IPSA in relation to publication of the information, and in doing so must consult—
  - (a) the Speaker of the House of Lords,
  - (b) the Leader of the House of Lords,
  - (c) the House of Lords Committee for Privileges and Conduct,
  - (d) the Compliance Officer, and
  - (e) any other person the IPSA considers appropriate.

#### **7E Review of determination under section 7D**

- (1) This section applies if—
  - (a) the IPSA determines under section 7D(3) that a claim is to be refused or that only part of the amount claimed is to be allowed, and

- (b) the member (after asking the IPSA to reconsider the determination and giving it a reasonable opportunity to do so) asks the Compliance Officer to review the determination (or any altered determination resulting from the IPSA's reconsideration).
- (2) The Compliance Officer must –
- (a) consider whether the determination (or the altered determination) is the determination that should have been made, and
  - (b) in light of that consideration, decide whether or not to confirm or alter it.
- (3) The Compliance Officer must give the IPSA a statement of any decision under subsection (2)(b), and may include a statement of the Compliance Officer's findings about the way in which the IPSA has dealt with the claim.
- (4) The IPSA must make any payments or adjustments necessary to give effect to the Compliance Officer's decision; but it must not do so until –
- (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.
- (5) A relevant appeal is –
- (a) an appeal under subsection (6) brought before the end of the period mentioned in subsection (7), or
  - (b) a further appeal in relation to the Compliance Officer's decision which –
    - (i) is brought before the end of the usual period for bringing such an appeal, and
    - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (6) The member may appeal to the First-tier Tribunal against a decision of the Compliance Officer under subsection (2)(b).
- (7) The appeal must be brought before the end of the period of 28 days beginning with the day on which notice of the decision is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
- (8) The appeal is by way of a rehearing.
- (9) On an appeal under subsection (6) the Tribunal may –
- (a) allow the appeal in whole or in part, or
  - (b) dismiss the appeal.
- (10) If the Tribunal allows the appeal (in whole or in part) it may –
- (a) order the IPSA to make any payments or adjustments necessary to give effect to that decision;
  - (b) make any other order it thinks fit.
- (11) If the Tribunal dismisses the appeal it may make any other order it thinks fit.
- (12) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal).

## **7F Information and guidance for members of the House of Lords**

- (1) The IPSA must—
  - (a) prepare guidance for members of the House of Lords about making claims under the House of Lords allowances scheme;
  - (b) review the guidance regularly and revise it as appropriate;
  - (c) publish the guidance in a way the IPSA considers appropriate;
  - (d) provide to any member on request such further advice about making claims as the IPSA considers appropriate.
- (2) The IPSA must provide to members of the House of Lords—
  - (a) details of any general information or guidance about taxation issues published by HMRC that it considers they should be aware of, and
  - (b) any other general information or guidance about taxation issues that it considers appropriate (consulting HMRC for this purpose as it considers appropriate).
- (3) “Taxation issues” means—
  - (a) issues about the taxation of salaries payable under section 7A and allowances payable under the House of Lords allowances scheme, and
  - (b) any other issues about taxation arising in connection with those salaries and allowances.
- (4) “HMRC” means Her Majesty’s Revenue and Customs.”

- (2) Schedule 7 (which makes further amendments to the Parliamentary Standards Act 2009, and related provision) has effect.

## **60 Tax status of members**

- (1) If a person is a member of the House of Lords for any part of a tax year, the person is to be treated for the purposes of the taxes listed in subsection (2) as resident, ordinarily resident and domiciled in the United Kingdom for the whole of that tax year.
- (2) The taxes are—
  - (a) income tax,
  - (b) capital gains tax, and
  - (c) inheritance tax.
- (3) For the purposes of this section a person is to be treated as becoming a member of the House of Lords when (having received a writ of summons to attend the House of Lords) the person makes and subscribes the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).
- (4) For the purposes of this section a person is to be treated as ceasing to be a member of the House of Lords—
  - (a) when the Parliament to which the writ related is dissolved, or
  - (b) (if earlier) when the person ceases to be a member of the House of Lords.
- (5) In relation to a transitional member, in subsection (1) the reference to any part of a tax year excludes any part of the year during which the member is

disqualified from sitting or voting in the House of Lords under section 44 (holders of certain judicial offices).

- (6) This section applies in relation to—
  - (a) the tax year in which the first meeting of the House of Lords in the first transitional period takes place, and
  - (b) subsequent tax years.
- (7) “Tax year”, in relation to inheritance tax, means a year beginning on 6 April and ending on the following 5 April.
- (8) This section does not apply in relation to Lords Spiritual.

## PART 9

### MISCELLANEOUS

#### *Peerages*

##### **61 Peers not disqualified from voting or from membership**

- (1) A person who holds a peerage is not by virtue of that peerage disqualified from voting at elections to either House of Parliament.
- (2) A person who holds a peerage is not by virtue of that peerage disqualified from membership of either House of Parliament.

##### **62 Power to disclaim life peerage**

- (1) A person (“L”) who holds a life peerage may at any time disclaim that peerage.
- (2) L does so by notifying the Lord Chancellor of the disclaimer.
- (3) The notice must be signed by L and by two persons as witnesses.
- (4) As soon as reasonably practicable after receiving the notice, the Lord Chancellor must—
  - (a) sign a certificate of receipt, and
  - (b) send a copy of it to L.
- (5) The disclaimer takes effect on signature of the certificate.
- (6) The disclaimer divests L (and any spouse or children) of all right to or interest in the peerage and all titles, rights, offices, privileges and precedence attaching to it.
- (7) The Lord Chancellor must—
  - (a) keep a register containing the particulars of any disclaimer of a peerage under this section, and
  - (b) make arrangements under which the public may inspect the register.
- (8) In this section “life peerage” means a peerage under the Life Peerages Act 1958 or the Appellate Jurisdiction Act 1876.

*Final provisions***63 Consequential and transitional provision and savings**

- (1) Schedule 8 (which makes consequential provision) has effect.
- (2) Schedule 9 (which makes transitional provision and savings) has effect.

**64 Orders and directions**

- (1) Orders made by a Minister of the Crown under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing an Order in Council under section 38(3) (non-disqualifying offices for appointed members) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing an order made by a Minister of the Crown under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to a statutory instrument containing an order made under—
  - (a) section 67 (commencement),
  - (b) paragraph 4 of Schedule 2 (implementation of Electoral Commission’s recommendation), or
  - (c) a provision listed in subsection (6).
- (5) A statutory instrument containing an order made by a Minister of the Crown under a provision listed in subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) The provisions are—
  - (a) section 9(1) (power to make provision about elections etc);
  - (b) section 34(7) (power to make provision about ministerial members);
  - (c) paragraph 17 of Schedule 7 (power to transfer staff etc to IPSA).
- (7) Any power of a Minister of the Crown under this Act to make an order (other than the power under section 67) and any power to make an Order in Council includes power—
  - (a) to make different provision for different cases or classes of case, different purposes or different areas;
  - (b) to make provision which applies generally or subject to specified exemptions or exceptions or only in relation to specified cases or classes of case;
  - (c) to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (8) Any power under this Act to give a direction includes power to vary or revoke the direction.

**65 Interpretation**

- (1) In this Act—

- “appointed members” means ordinary appointed members or replacement appointed members;
- “the Commission” has the meaning given by section 16(1);
- “elected members” means ordinary elected members, substitute elected members or replacement elected members;
- “electoral period” has the meaning given by section 3(3);
- “enactment” means an enactment contained in, or an instrument made under—
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or
  - (d) Northern Ireland legislation;
- “first transitional period” has the meaning given by section 3(1);
- “the Joint Committee” has the meaning given by section 17(1);
- “Lords Spiritual” means the named Lords Spiritual or ordinary Lords Spiritual;
- “the Minister” means the Lord President of the Council or the Secretary of State;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “ministerial member” has the meaning given by section 34(1);
- “modify” includes amend, repeal or revoke (and related terms are to be read accordingly);
- “named Lord Spiritual” has the meaning given by section 26(1);
- “named offices” has the meaning given by section 26(2);
- “one-period replacement elected member” has the meaning given by section 15(3);
- “ordinary appointed member” has the meaning given by section 18(1);
- “ordinary elected member” has the meaning given by section 5(1);
- “ordinary Lord Spiritual” has the meaning given by section 27(1) (but see section 30);
- “registered party” has the meaning given by section 9(10);
- “replacement appointed member” has the meaning given by section 20(2);
- “replacement elected member” has the meaning given by section 13(3);
- “second transitional period” has the meaning given by section 3(2);
- “Secretary General” has the meaning given by section 27(9);
- “substitute elected member” has the meaning given by section 11(2);
- “transitional members” has the meaning given by paragraph 1 of Schedule 6;
- “two-period replacement elected member” has the meaning given by section 15(4).
- (2) In this Act “peerage” means—
- (a) a hereditary peerage (including the principality of Wales and the earldom of Chester),
  - (b) a peerage under section 1 of the Life Peerages Act 1958, or
  - (c) the dignity conferred by virtue of appointment as a Lord of Appeal in Ordinary,
- (and “peer” is to be construed accordingly).

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- (3) In this Act references to a bishop are to the bishop of a diocese of the Church of England.
  - (4) A requirement or power under this Act to notify is a requirement or power to give notice in writing.

**66 Extent**

- (1) An amendment, repeal or revocation by this Act has the same extent as the provision to which it relates.
- (2) Subject to that (and paragraph 21(2) of Schedule 4), this Act extends to England and Wales, Scotland and Northern Ireland.

**67 Commencement**

- (1) This Act comes into force on such day as the Minister may by order appoint (subject to subsection (2)).
- (2) Sections 64 to 68 come into force on the day on which this Act is passed.
- (3) An order under subsection (1) may—
  - (a) appoint different days for different purposes;
  - (b) make transitional, transitory or saving provision.

**68 Short title**

This Act may be cited as the House of Lords Reform Act 2011.

## SCHEDULES

### SCHEDULE 1

Section 5

#### ELECTORAL DISTRICTS

- 1 The electoral districts for House of Lords elections are listed in the first column of the Table below and comprise the areas specified in the second column.
- 2 (1) A reference to an area specified in the second column of the Table is a reference to the area as it is for the time being.
- (2) But where an area specified in the second column of the Table is altered, the alteration does not have effect for the purposes of this Act until the first House of Lords election that takes place after the alteration comes into force for all other purposes.

TABLE

<i>Name of electoral district</i>	<i>Area included</i>
<i>[To be determined]</i>	

## SCHEDULE 2

Section 5

### ALLOCATION OF ORDINARY ELECTED MEMBERS

*Initial allocation of ordinary elected members for House of Lords elections*

- 1 The number of ordinary elected members that are to be returned for each electoral district at a House of Lords election is set out in the following Table—

TABLE

<i>Name of electoral district</i>	<i>Number of ordinary elected members</i>
<i>[To be determined]</i>	

*Review of allocation of ordinary elected members after every third House of Lords election*

- 2 (1) In each review period, the Electoral Commission must—
- (a) carry out a review of the number of ordinary elected members that are to be returned for each electoral district at a House of Lords election, and
  - (b) send a report of its conclusions to the Minister.
- (2) “Review period” means the period of 12 months which begins with the day after the polling day for every third House of Lords election.
- (3) In carrying out a review, the Electoral Commission must consider whether the current arrangements achieve the result that, subject to the relevant principles, the ratio of electors to ordinary elected members is as nearly as possible the same for each electoral district adopting the allocation method set out in paragraph 3.
- (4) The relevant principles are as follows—
- (a) at least three ordinary elected members are to be returned for an electoral district at a House of Lords election;
  - (b) the total number of ordinary elected members returned at each House of Lords election is to be 80.

- (5) If the Electoral Commission concludes that the current arrangements do not achieve the result mentioned in sub-paragraph (3), it must include in its report a recommendation specifying the number of ordinary elected members that should be returned for each electoral district at a House of Lords election in order to achieve that result.
  - (6) The report must be published by the Electoral Commission and laid before Parliament by the Minister.
- 3 (1) The allocation method referred to in paragraph 2(3) is as follows.
- (2) The first ordinary elected member is to be allocated to the electoral district with the greatest electorate.
- (3) The second and subsequent ordinary elected members are to be allocated in the same way, except that the electorate of an electoral district to which one or more ordinary elected members have already been allocated is to be divided by—

$$2N + 1$$

where N is the number of ordinary elected members already allocated to that district.

- (4) Where the figure given by sub-paragraph (3) is the same for two or more electoral districts, the electoral district to which an ordinary elected member is to be allocated is to be the one with the smaller or smallest actual electorate.

*Implementation of Electoral Commission's recommendation*

- 4 (1) This paragraph applies where a recommendation is made under paragraph 2(5).
- (2) The Minister must lay before Parliament a draft of an order giving effect to the recommendation by amending any of the numbers specified in the Table in paragraph 1.
- (3) If the draft is approved by a resolution of each House, the Minister must make an order in the terms of the draft.
- (4) If a motion for the approval of the draft is rejected by either House or withdrawn by leave of the House, the Minister may—
  - (a) revise the draft of the order, and
  - (b) lay the revised draft of the order before Parliament.
- (5) Sub-paragraphs (3) and (4) apply to revised drafts of an order as they apply to the first draft of the order.
- (6) For the purposes of sub-paragraph (3) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (7) Where an order under this paragraph makes consequential, transitional or saving provision by virtue of section 64(7), that provision may modify any enactment.
- (8) This paragraph has effect subject to paragraph 5.

- 5 (1) The Minister must consult the Electoral Commission before laying a draft (or revised draft) of an order before Parliament under paragraph 4.
- (2) The Minister may not, without the consent of the Electoral Commission, revise the draft of an order so as to propose an allocation of ordinary elected members between the electoral districts which is other than that recommended under paragraph 2(5).
- (3) The Electoral Commission may give its consent under sub-paragraph (2) only if it is satisfied that what is proposed could have been recommended under paragraph 2(5).

*Meaning of “electors” and “electorate”*

- 6 (1) This paragraph applies for the purposes of paragraphs 2 and 3.
- (2) The “electorate” of an electoral district is the total number of electors in relation to that district.
- (3) An “elector”, in relation to an electoral district, is a person—
- (a) whose name appears on the relevant day in the register of parliamentary electors for a constituency which is wholly or partly comprised in the electoral district, and
  - (b) who has a qualifying address.
- (4) A person has a qualifying address if—
- (a) the address in respect of which the person is registered in the relevant register of parliamentary electors on the relevant day is within the electoral district, or
  - (b) the person’s registration in the relevant register of parliamentary electors on the relevant day results from an overseas elector’s declaration which specifies an address within the electoral district.
- (5) “Relevant day” means the most recent 1 December before the review in question is begun.

SCHEDULE 3

Section 11

SUBSTITUTE ELECTED MEMBERS

*Introductory*

- 1 (1) This Schedule applies if—
- (a) there is a vacancy in the seat of an elected member (“E”) before the end of E’s expected term, and
  - (b) section 11 requires that a person is to be returned as a substitute elected member to replace E.
- (2) In this Schedule—
- (a) “the returning officer” means the returning officer for the electoral district for which E was returned as an elected member,
  - (b) “the relevant electoral district” means that electoral district, and
  - (c) E’s “expected term” has the same meaning as it has in section 11.

*Initial determination*

- 2 (1) The returning officer must determine, by reference to the statement of candidates nominated for the purposes of the House of Lords election at which the previously elected member (“the previous EM”) was returned, whether the previous EM stood—
- (a) in the name of one registered party only when elected,
  - (b) in the name of two or more registered parties only when elected, or
  - (c) as an independent when elected.
- (2) In this Schedule, “the previous EM” means—
- (a) where E was an ordinary elected member or a replacement elected member, E;
  - (b) where E was a substitute elected member, the person who was last returned as an ordinary elected member or a replacement elected member at a House of Lords election to fill E’s seat.
- (3) For the purposes of this Schedule, a person stood as an independent if the person stood otherwise than as described in sub-paragraph (1)(a) or (b).

*Procedure for filling the vacancy*

- 3 (1) When the returning officer has made the determination under paragraph 2, the officer must draw up the appropriate list (see paragraph 7).
- (2) The returning officer must then take such steps as appear to the officer to be reasonable to contact the person whose name appears first on that list to ask the person—
- (a) to sign and date the necessary declaration (see paragraph 8), and
  - (b) to deliver it to the officer.
- (3) If the procedure in sub-paragraph (2) is unsuccessful, the returning officer must repeat the procedure required by that sub-paragraph in respect of the person whose name appears next on the list (and so on) until—
- (a) the officer receives the necessary declaration signed and dated by a person whose name appears on the list, or
  - (b) the names on the list are exhausted.
- (4) For the purposes of this paragraph, the procedure in sub-paragraph (2) is unsuccessful if—
- (a) within such period as the returning officer considers reasonable, the officer decides that the steps which the officer has taken to contact the person in question (“P”) under sub-paragraph (2) have been unsuccessful,
  - (b) within such period as the returning officer considers reasonable, the officer has not received from P the necessary declaration signed and dated by P, or
  - (c) P has stated in writing that P is not willing or able to sign such a declaration.
- (5) Subject to sub-paragraphs (6) and (7), where the returning officer receives the necessary declaration signed and dated as requested under sub-paragraph (2) by a person whose name appears on the list, the officer must—

- (a) subject to paragraph 6, declare in writing that person to be returned as a substitute elected member of the House of Lords for the relevant electoral district,
  - (b) give public notice of that declaration, and
  - (c) send a copy of it to the Speaker of the House of Lords.
- (6) Sub-paragraph (7) applies where –
- (a) the returning officer has asked a person (“X”) whose name appears second or lower on the list the questions referred to in sub-paragraph (2), and
  - (b) the returning officer then receives the necessary declaration signed and dated as requested under sub-paragraph (2) by a person who was asked those questions on an earlier occasion in respect of the vacancy.
- (7) In such a case, the receipt of that declaration does not count for the purposes of sub-paragraph (5) unless and until the procedure in sub-paragraph (2) is unsuccessful in relation to X.
- 4 (1) This paragraph applies if –
- (a) the returning officer determines under paragraph 2(1) that the previous EM stood in the name of one registered party only, or of two or more registered parties only, when elected, and
  - (b) having complied with paragraph 3, the names on the appropriate list are exhausted and the returning officer has not received the necessary declaration signed and dated as requested.
- (2) The returning officer must draw up the secondary list (see paragraph 10).
- (3) The returning officer must then repeat the procedure in paragraph 3 in respect of the names in the order in which they appear on that list (with references in that paragraph to the appropriate list being read as references to the secondary list).
- (4) If, having complied with this paragraph, the names on the secondary list are exhausted and the returning officer has not received the necessary declaration signed and dated as requested the returning officer must notify the Speaker of the House of Lords that E’s seat has not been filled under this Schedule.
- 5 (1) This paragraph applies if –
- (a) the returning officer determines under paragraph 2(1) that the previous EM stood as an independent when elected, and
  - (b) having complied with paragraph 3, the names on the appropriate list are exhausted and the returning officer has not received the necessary declaration signed and dated as requested.
- (2) The returning officer must notify the Speaker of the House of Lords that E’s seat has not been filled under this Schedule.
- 6 (1) This paragraph applies where –
- (a) the returning officer determines under paragraph 2(1) that the previous EM stood in the name of one registered party only, or of two or more registered parties only, and

- (b) the returning officer receives the necessary declaration signed and dated as requested under paragraph 3(2) by a person whose name appears on the appropriate list (not the secondary list).
- (2) The declaration mentioned in paragraph 3(5)(a) is a declaration that the person is returned as a substitute elected member in the name of that party or, as the case may be, of each of those parties.
- (3) But sub-paragraph (2) does not apply in the case of a party which is no longer a registered party on the date on which that declaration is made.

*“The appropriate list”*

- 7 (1) Where the returning officer determines under paragraph 2(1) that the previous EM stood in the name of one registered party only when elected, the “appropriate list” is a list of the names and addresses of the candidates (if any) who—
  - (a) stood for election in the name of that registered party only in the relevant electoral district at the last House of Lords election, but
  - (b) were not returned as elected members at that election.
- (2) But a person’s name is not to be included in that list if—
  - (a) the person is not a member of the registered party in question, and
  - (b) that party notifies the returning officer, before the list is drawn up, that the person’s name is not to be included on the list.
- (3) Where the returning officer determines under paragraph 2(1) that the previous EM stood in the name of two or more registered parties only when elected, the “appropriate list” is a list of the names and addresses of the candidates (if any) who—
  - (a) stood for election in the name of exactly the same parties only in the relevant electoral district at the last House of Lords election, but
  - (b) were not returned as elected members at that election.
- (4) But a person’s name is not to be included in that list if—
  - (a) the person is not a member of the registered parties in question, and
  - (b) any of those parties notifies the returning officer, before the list is drawn up, that the person’s name is not to be included on the list.
- (5) Where the returning officer determines under paragraph 2(1) that the previous EM stood as an independent when elected, the “appropriate list” is a list of the names and addresses of the candidates (if any) who—
  - (a) stood for election in the relevant electoral district at the last House of Lords election, but
  - (b) were not returned as elected members at that election.
- (6) The order in which the candidates’ names and addresses are to be listed under sub-paragraph (1), (3) or (5) is by reference to the total number of votes recorded for each of them at that last House of Lords election (with the candidate with the highest total appearing first on the list).

*“The necessary declaration”*

- 8 Subject to paragraph 9, “the necessary declaration” is a declaration by the person signing it that—

- (a) gives the person's consent to being returned as a substitute elected member for the relevant electoral district,
  - (b) declares that the person is aware of the provisions of section 36 (disqualification from being an elected member),
  - (c) declares that to the best of the person's knowledge and belief, the person is not disqualified from being an elected member, and
  - (d) states the person's date of birth.
- 9 (1) This paragraph applies where the returning officer determines under paragraph 2(1) that the previous EM stood in the name of one registered party only, or of two or more registered parties only.
- (2) In the case of a person whose name appears on the appropriate list, "the necessary declaration" must also give the person's consent to being returned as a substitute elected member in the name of that party or, as the case may be, of each of those parties.
- (3) But such consent is not required in the case of a party if it is no longer a registered party on the date on which the necessary declaration is signed.

*"The secondary list"*

- 10 (1) "The secondary list" is a list of the names and addresses of the candidates (if any)–
- (a) who stood for election in the relevant electoral district at the last House of Lords election, but were not returned as elected members at that election, and
  - (b) whose names were not included in the appropriate list.
- (2) The order in which the candidates' names and addresses are to be listed is by reference to the total number of votes recorded for each of them at that last House of Lords election (with the candidate with the highest total appearing first on the list).

*Supplementary*

- 11 References in this Schedule to the names on the appropriate or secondary list being exhausted include a reference to the case where there were no names to include in that list.
- 12 Where E was a substitute elected member immediately before the vacancy occurred, E's name and address are not to be included in the appropriate or secondary list.
- 13 For the purposes of this Schedule, the total number of votes recorded for a candidate at a House of Lords election means the total number of votes recorded for that candidate (whether first preference or transferred votes) at the conclusion of the count.

## SCHEDULE 4

Section 16

## THE HOUSE OF LORDS APPOINTMENTS COMMISSION

*The Commissioners*

- 1 (1) The Commission is to consist of seven members (“Commissioners”) appointed by Her Majesty.
- (2) One of the Commissioners (“the chair”) is to be appointed by Her Majesty to chair the Commission.
- (3) Her Majesty’s powers under sub-paragraphs (1) and (2) are exercisable on the recommendation of the Prime Minister.
- (4) The Prime Minister is to select persons for recommendation on merit on the basis of fair and open competition.
- (5) A Minister of the Crown may not be appointed as a Commissioner.
- (6) If a Commissioner becomes a Minister of the Crown, that person ceases to be a Commissioner.

*Terms and conditions: general*

- 2 (1) Subject to the provisions of this Schedule, the chair and the other Commissioners hold office in accordance with the terms and conditions of their appointment.
- (2) Those terms and conditions are to be determined by the Joint Committee.

*Term of office*

- 3 (1) The chair and the other Commissioners are to be appointed for a fixed term of 10 years.
- (2) A person who ceases to hold office as the chair also ceases to hold office as a Commissioner.
- (3) A person may not be appointed as a Commissioner more than once.

*Resignation*

- 4 (1) The chair may resign from office by notifying the Prime Minister of the resignation.
- (2) The other Commissioners may resign from office by notifying the chair (or, if the office of chair is vacant, the Prime Minister) of the resignation.

*Removal from office*

- 5 (1) Her Majesty may remove the chair from office on an address of both Houses of Parliament.
- (2) Her Majesty may remove any of the other Commissioners from office on an address of both Houses of Parliament.

- (3) A motion for an address under sub-paragraph (1) or (2) may be made (in either House) only if the Joint Committee has reported to the House that it is satisfied that one or more of the removal conditions is met.
- (4) The removal conditions are that—
  - (a) the person is absent from 3 successive meetings of the Commission without the Commission's approval,
  - (b) the person is convicted of an offence,
  - (c) a bankruptcy restrictions order or undertaking (but not an interim order) under a provision listed in sub-paragraph (6) comes into force in relation to the person,
  - (d) a debt relief restrictions order or undertaking (but not an interim order) under Schedule 4ZB to the Insolvency Act 1986 comes into force in relation to the person, or
  - (e) the person is unfit or unable to carry out the functions of the office.
- (5) For the purpose of determining if a person is convicted of an offence—
  - (a) it does not matter where the person is convicted, and
  - (b) an act punishable under the law of a country or territory outside the United Kingdom is an offence for the purposes of this paragraph (however it is described in that law).
- (6) The provisions referred to in sub-paragraph (4)(c) are—
  - (a) Schedule 4A to the Insolvency Act 1986;
  - (b) section 56A or 56G of the Bankruptcy (Scotland) Act 1985;
  - (c) Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

*Remuneration*

- 6 (1) The terms and conditions on which a person is appointed as the chair or as one of the other Commissioners may provide for the Commission—
  - (a) to pay remuneration and allowances to the person;
  - (b) to make provision for a pension in relation to that person.
- (2) The Commission must make the payment or provision accordingly.

*Code of conduct*

- 7 (1) The Commission must prepare, and may from time to time revise, a code of conduct for the chair and the other Commissioners.
- (2) The code must in particular—
  - (a) incorporate the Nolan principles or such other similar principles as may be adopted by the Commission from time to time, and
  - (b) include provision about the disclosure of interests by the chair and the other Commissioners.
- (3) “The Nolan principles” means the seven general principles of public life set out in the First Report of the Committee on Standards in Public Life (Cm 2850).
- (4) The Commission must submit the code (or revision) to the Joint Committee.

- (5) The code does not come into effect until it is approved by the Joint Committee.

*Powers*

- 8 The Commission may do anything (except borrow money) which is calculated to facilitate the carrying out of its functions or is incidental or conducive to the carrying out of those functions.

*Committees etc*

- 9 (1) The Commission may establish committees, and committees of the Commission may establish sub-committees.
- (2) All members of a committee or sub-committee must be Commissioners.
- (3) The Commission may delegate functions, other than the functions listed in sub-paragraph (5), to a committee or to one of the Commissioners.
- (4) A committee may delegate functions (including functions delegated to it) to a sub-committee or to one of the Commissioners.
- (5) The functions which the Commission may not delegate are—
- (a) the preparation of a scheme under section 24(5) (criteria and procedure for selection);
  - (b) the selection of persons to recommend to the Prime Minister for appointment;
  - (c) the making of recommendations under sections 18(3) and 20(4) (recommendations for appointment);
  - (d) the withdrawal of recommendations under section 25;
  - (e) the appointment of a chief executive under paragraph 11(1).

*Procedure and proceedings*

- 10 (1) The Commission may determine its own procedure and the procedure of its committees and sub-committees (including quorum).
- (2) The validity of proceedings of the Commission or a committee or sub-committee is not affected by—
- (a) a vacancy among the members, or
  - (b) a defect in the appointment of a member.

*Staff*

- 11 (1) The Commission must appoint a chief executive.
- (2) The Commission may appoint other staff.
- (3) The chief executive and other staff are to be appointed on terms and conditions determined by the Commission, having regard to the desirability of keeping them broadly in line with those applying to persons employed in the civil service of the State.

*Interim staff*

- 12 (1) The chair of the Joint Committee may appoint a person to act as chief executive until the first appointment under paragraph 11(1) takes effect.
- (2) A person acting under sub-paragraph (1) may incur expenditure and do other things (including appointing persons to the Commission's staff) in the name and on behalf of the Commission—
  - (a) before the membership of the Commission is first constituted in accordance with paragraph 1, and
  - (b) after that, until the Commission determines otherwise.
- (3) A person's powers under sub-paragraph (2) are exercisable subject to any directions given to the person by the chair of the Joint Committee.
- (4) The chair of the Joint Committee may appoint other persons to the Commission's staff.
- (5) The chair of the Joint Committee may not exercise the power in sub-paragraph (4) after the membership of the Commission is first constituted in accordance with paragraph 1.

*Staff pensions*

- 13 (1) Employment by the Commission is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 may apply.
- (2) The Commission must pay to the Minister for the Civil Service the sums determined by the Minister in respect of any increase attributable to this paragraph in the sums payable out of money provided by Parliament under that Act.
- (3) In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of the Act may apply), at the end of the list of “Royal Commissions and other Commissions” insert—  
 “House of Lords Appointments Commission.”

*Delegation to staff*

- 14 (1) The Commission may delegate functions to any of the Commission's staff, other than the functions listed in paragraph 9(5).
- (2) A committee or sub-committee may delegate functions (including functions delegated to it) to any of the Commission's staff.
- (3) A Commissioner may delegate functions (including functions delegated to the Commissioner) to any of the Commission's staff.
- (4) The chief executive may delegate functions (including functions delegated to the chief executive) to any of the Commission's staff.

*Delegation and contracting out of superannuation functions*

- 15 (1) Section 1(2) of the Superannuation Act 1972 (delegation of functions relating to civil service superannuation schemes by Minister for the Civil Service to another officer of the Crown etc.) has effect as if the reference to an officer of

the Crown other than a Minister included a reference to the Commission’s chief executive.

- (2) Any administration function conferred on the chief executive under section 1(2) of that Act (in accordance with sub-paragraph (1)) may be carried out by, or by employees of, any person authorised by the chief executive.
- (3) “Administration function” means a function of administering schemes made under section 1 of that Act, and from time to time in force.
- (4) Under sub-paragraph (2) the chief executive may authorise a person to carry out administration functions—
  - (a) to their full extent or to a specified extent;
  - (b) in all cases or in specified cases;
  - (c) unconditionally or subject to specified conditions.
- (5) An authorisation under sub-paragraph (2)—
  - (a) is to be treated for all purposes as given by virtue of an order under section 69 of the Deregulation and Contracting Out Act 1994 (contracting out of functions of Ministers and office-holders);
  - (b) may be revoked at any time by the Commission or the chief executive.

#### *Status*

- 16 (1) The Commission, its members and its staff are not to be regarded—
  - (a) as the servants or agents of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Commission’s property is not to be regarded as property of, or property held on behalf of, the Crown.

#### *Funding*

- 17 (1) The Commission’s expenditure is to be paid out of money provided by Parliament.
- (2) For each financial year other than its first, the Commission must prepare an estimate of the Commission’s use of resources and submit it to the Joint Committee.
- (3) The Joint Committee must review the estimate and decide whether it is satisfied that the estimate is consistent with the efficient and cost-effective discharge by the Commission of its functions.
- (4) If not so satisfied, the Joint Committee must make such modifications to the estimate as it considers necessary for achieving that consistency.
- (5) Before deciding whether it is satisfied or making modifications, the Joint Committee must consult the Treasury and have regard to any advice given.
- (6) After the Joint Committee has reviewed the estimate and made any modifications, the person who chairs the Joint Committee must lay the estimate before the House of Commons.
- (7) If the Joint Committee does not follow any advice given by the Treasury, or makes any modifications to the estimate, it must prepare a statement of its

reasons and the person who chairs the Joint Committee must lay the statement before the House of Commons.

*Accounts and accounting officer*

- 18 (1) The Commission must keep proper accounting records.
- (2) The Commission must, for each financial year, prepare accounts in accordance with directions given to it by the Treasury.
- (3) The Treasury may in particular give the Commission directions as to—
  - (a) the information to be contained in the accounts and how it is to be presented,
  - (b) the methods and principles in accordance with which the accounts are to be prepared, and
  - (c) any additional information that is to accompany the accounts.
- (4) The Commission's chief executive is to be its accounting officer.

*Audit*

- 19 (1) As soon as reasonably practicable after the end of each financial year the Commission must submit its accounts for that year to the Comptroller and Auditor General and to the Joint Committee.
- (2) The Comptroller and Auditor General must—
  - (a) examine and certify the accounts submitted under this paragraph, and
  - (b) lay before each House of Parliament a copy of the certificate and the accounts together with a report on them.

*Reports*

- 20 (1) As soon as reasonably practicable after the end of each financial year the Commission must prepare a report about the performance of its functions during that year.
- (2) The person who chairs the Joint Committee must lay the report before each House of Parliament.
- (3) When the report has been laid before each House the Commission must publish it.

*Documentary evidence*

- 21 (1) A document purporting to be duly executed under the seal of the Commission or signed on its behalf—
  - (a) is to be received in evidence, and
  - (b) unless the contrary is proved, is to be taken to be executed or signed in that way.
- (2) This paragraph does not extend to Scotland.

*Disqualification*

- 22 (1) In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975

(bodies of which all members are disqualified), at the appropriate place insert—

“The House of Lords Appointments Commission.”

(2) In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert—

“The House of Lords Appointments Commission.”

*Freedom of information*

23 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities), the entry for “The House of Lords Appointments Commission” is to be treated as a reference to the Commission.

*Public records*

24 In Schedule 1 to the Public Records Act 1958 (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert—

“The House of Lords Appointments Commission.”

*Interpretation*

25 In this Schedule “financial year” means—

- (a) the period beginning with the day on which the Commission is established and ending with the next following 31 March, and
- (b) each successive period of 12 months.

## SCHEDULE 5

Section 17

### THE JOINT COMMITTEE ON THE HOUSE OF LORDS APPOINTMENTS COMMISSION

*Members*

1 (1) The Joint Committee is to consist of the following—

- (a) a Minister of the Crown with responsibilities in relation to constitutional matters who is a member of the House of Commons;
- (b) four members of the House of Lords who are not Ministers of the Crown;
- (c) four members of the House of Commons who are not Ministers of the Crown;
- (d) the person who chairs the relevant committee of the House of Lords;
- (e) the person who chairs the relevant committee of the House of Commons.

(2) Members of the Joint Committee are to be appointed—

- (a) for the purposes of sub-paragraph (1)(a) by the Prime Minister,
- (b) for the purposes of sub-paragraph (1)(b) by the House of Lords, and
- (c) for the purposes of sub-paragraph (1)(c) by the House of Commons.

(3) The Joint Committee is to select one of its members to chair it.

- (4) For the purposes of sub-paragraph (1)(d) and (e), the relevant committee of the House of Lords or the House of Commons is the committee of that House concerned with constitutional matters, so far as relating to membership of the House of Lords.
- (5) Any question arising under sub-paragraph (4) is to be determined by the Speaker of the House in question.

*Term of office of members*

- 2 (1) In this paragraph “appointed member of the Joint Committee” means a member appointed under paragraph 1(2).
- (2) Except as provided by this paragraph, an appointed member of the Joint Committee is a member of the Joint Committee for the remainder of the Parliament in which the person is appointed.
- (3) If an appointed member of the Joint Committee who is a member of the House of Lords ceases to be a member of that House, that person ceases to be a member of the Joint Committee.
- (4) If an appointed member of the Joint Committee who is a member of the House of Commons ceases to be a member of that House, that person ceases to be a member of the Joint Committee.
- (5) If an appointed member of the Joint Committee within paragraph 1(1)(b) or (c) becomes a Minister of the Crown, that person ceases to be a member of the Joint Committee.
- (6) An appointed member of the Joint Committee ceases to be a member of the Joint Committee if another person is appointed in that person’s place.
- (7) An appointed member of the Joint Committee may resign from the Joint Committee by notifying the Committee of the resignation.
- (8) An appointed member of the Joint Committee may be reappointed (more than once).

*Procedure*

- 3 (1) The Joint Committee may establish sub-committees.
- (2) The functions of the Joint Committee under paragraph 17 of Schedule 4 (review of Commission’s estimates) are to be exercised by a sub-committee which does not include any member of the House of Lords.
- (3) Subject to that, the Committee may determine its own procedure and the procedure of its sub-committees (including quorum).
- (4) The validity of proceedings of the Joint Committee or a sub-committee is not affected by—
  - (a) a vacancy among its members, or
  - (b) a defect in the appointment of a member.

## SCHEDULE 6

Section 35

## TRANSITIONAL MEMBERS

*Introductory*

- 1 (1) This Schedule makes provision about the number of transitional members of the House of Lords for the first transitional period and the second transitional period, and about their selection.
- (2) References in this Act to “transitional members” are to be construed accordingly.

*Number of transitional members for first transitional period*

- 2 (1) For the first transitional period the maximum number of transitional members is two thirds of the number of peers who, at the beginning of the relevant day, are entitled to receive writs of summons to attend the House of Lords.
- (2) The “relevant day” is the day on which the Bill for this Act is presented in the House of Commons.
- (3) In determining for the purposes of sub-paragraph (1) whether a peer is entitled to receive writs of summons to attend the House of Lords, ignore section 427 of the Insolvency Act 1986 (no entitlement to writs of summons during bankruptcy etc).
- (4) If the number given by sub-paragraph (1) is not a whole number, it is to be rounded up to the nearest whole number.

*Selection of transitional members for first transitional period*

- 3 (1) A person is eligible to be a transitional member for the first transitional period if, immediately before the relevant Parliament is dissolved, the person is a peer entitled to receive writs of summons to attend the House of Lords.
- (2) The “relevant Parliament” is the Parliament the dissolution of which is followed by the first House of Lords election.
- (3) In determining for the purposes of sub-paragraph (1) whether a peer is entitled to receive writs of summons to attend the House of Lords, ignore section 427 of the Insolvency Act 1986 (no entitlement to writs of summons during bankruptcy etc).
- (4) In order to become a transitional member for the first transitional period, such a person must be selected as a transitional member before the beginning of that period.
- (5) The selection is to be made in accordance with standing orders of the House of Lords.
- (6) The standing orders may in particular—  
(a) make further provision about a person’s eligibility for selection as a transitional member;

- (b) make provision for transitional members to be selected by election or otherwise (including provision for selection by political parties or other groups).
- (7) If the standing orders make provision under sub-paragraph (6)(a), they may also make provision about the consequences of a person being selected who under the standing orders is not eligible for selection.
- (8) That provision may include provision that the selection is void (or is void in the circumstances or subject to the exceptions specified in the standing orders).
- (9) If a person's selection is void because of provision under sub-paragraph (8) –
  - (a) any writ of summons issued to the person because of the selection has no effect, and
  - (b) no-one else is to be selected in the person's place.
- (10) Anything required or permitted to be done by standing orders under this paragraph may be done when the House of Lords is adjourned, or Parliament is prorogued or dissolved; but this is subject to any provision made in the standing orders.
- (11) A person may be selected as a transitional member for the first transitional period in accordance with standing orders made in anticipation of this paragraph being enacted or coming into force.

*Number of transitional members for second transitional period*

- 4 (1) For the second transitional period the maximum number of transitional members is one third of the number of peers who, at the beginning of the relevant day, are entitled to receive writs of summons to attend the House of Lords.
- (2) The “relevant day” is the day on which the Bill for this Act is presented in the House of Commons.
- (3) In determining for the purposes of sub-paragraph (1) whether a peer is entitled to receive writs of summons to attend the House of Lords, ignore section 427 of the Insolvency Act 1986 (no entitlement to writs of summons during bankruptcy etc).
- (4) If the number given by sub-paragraph (1) is not a whole number, it is to be rounded up to the nearest whole number.

*Selection of transitional members for second transitional period*

- 5 (1) A person is eligible to be a transitional member for the second transitional period if, immediately before the last (or only) Parliament of the first transitional period is dissolved, the person is a transitional member.
- (2) In order to become a transitional member for the second transitional period, such a person must be selected as a transitional member before the beginning of that period.
- (3) The selection is to be made in accordance with standing orders of the House of Lords.

- (4) The standing orders may in particular—
  - (a) make further provision about a person’s eligibility for selection as a transitional member;
  - (b) make provision for transitional members to be selected by election or otherwise (including provision for selection by political parties or other groups).
- (5) If the standing orders make provision under sub-paragraph (4)(a), they may also make provision about the consequences of a person being selected who under the standing orders is not eligible for selection.
- (6) That provision may include provision that the selection is void (or is void in the circumstances or subject to the exceptions specified in the standing orders).
- (7) If a person’s selection is void because of provision under sub-paragraph (6)—
  - (a) any writ of summons issued to the person because of the selection has no effect, and
  - (b) no-one else is to be selected in the person’s place.
- (8) Anything required or permitted to be done by standing orders under this paragraph may be done when the House of Lords is adjourned, or Parliament is prorogued or dissolved; but this is subject to any provision made in the standing orders.

*Term of office etc*

- 6 (1) A person (“T”) who is selected as a transitional member for the first transitional period or the second transitional period is a transitional member for the period which—
  - (a) begins with that transitional period, and
  - (b) ends with the day on which the last (or only) Parliament of that transitional period is dissolved.
- (2) T is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament which meets during the period for which T is a transitional member.
- (3) Sub-paragraphs (1) and (2) are subject to—
  - (a) any provision of this Act or another enactment relating to T’s membership of the House of Lords or T’s entitlement to receive writs of summons to attend the House of Lords, and
  - (b) any inherent power of the House of Lords to suspend T from its service.
- (4) If T ceases to be a transitional member—
  - (a) any writ of summons previously issued to T because of this paragraph has no further effect, and
  - (b) T is not to be replaced.

*Bar on being a transitional member and an elected or appointed member*

- 7 (1) Sub-paragraphs (2) and (3) apply if a person is both selected as a transitional member for the first transitional period or the second transitional period, and—

- (a) returned as an elected member at the House of Lords election the polling day for which is the day before the first day of that period, or
  - (b) appointed as an ordinary appointed member in connection with that election.
- (2) The person's selection as a transitional member is void (and accordingly, any writ of summons issued to the person because of that selection has no effect).
- (3) No other person is to be a transitional member in the person's place.
- (4) If a transitional member is appointed as a replacement appointed member, the person ceases to be a transitional member immediately before the day of the person's appointment as a replacement appointed member.
- (5) If a transitional member is returned as a substitute elected member, the person ceases to be a transitional member immediately before the day of the person's return as a substitute elected member.

*Supplementary provision*

- 8 (1) Any question as to—
- (a) the maximum number of transitional members under paragraph 2 or 4, or
  - (b) whether a person has been selected as a transitional member under paragraph 3 or 5,
- is to be determined by the Clerk of the Parliaments.
- (2) A certificate of the Clerk's decision signed by the Clerk is conclusive.

## SCHEDULE 7

Section 59

### SALARIES AND ALLOWANCES

#### PART 1

##### INTERPRETATION

- 1 In this Schedule—

“the PSA 2009” means the Parliamentary Standards Act 2009;  
 “the IPSA” means the Independent Parliamentary Standards Authority.

#### PART 2

##### AMENDMENTS TO THE PSA 2009

*Introductory*

- 2 The PSA 2009 is amended as follows.

*Section 2: application of the PSA 2009 to House of Lords*

- 3 Omit section 2 (nothing in PSA 2009 affects House of Lords).

*Section 3: the IPSA etc*

- 4 In section 3(5) (Speaker’s Committee for the IPSA) for “Speaker’s” substitute “Speakers”.

*Section 3A: general duties of the IPSA*

- 5 In section 3A(2) (general duties of the IPSA) after “members of the House of Commons” insert “and members of the House of Lords”.

*Section 5: MPs’ allowances scheme*

- 6 In section 5(4)(d) and (5) (MPs’ allowances scheme) after “Speaker” insert “of the House of Commons”.

*Section 9: investigations*

- 7 (1) Amend section 9 (investigations) as follows.
- (2) In subsection (1) –
- (a) the words from “a member” to the end become paragraph (a), and
  - (b) after that paragraph insert “or,
- (b) a member of the House of Lords may have been paid an amount under the House of Lords allowances scheme that should not have been allowed.”
- (3) In subsections (6)(b), (7) and (8)(a) for “MPs’ allowances scheme” substitute “relevant allowances scheme”.
- (4) In subsection (10) –
- (a) the words from “to a member” to the end become paragraph (a), and
  - (b) after that paragraph insert “, and
- (b) to a member of the House of Lords, include a former member of the House of Lords.”
- (5) After that subsection insert –
- “(11) In this section the “relevant allowances scheme” means –
- (a) in relation to an investigation under subsection (1)(a), the MPs’ allowances scheme, and
  - (b) in relation to an investigation under subsection (1)(b), the House of Lords allowances scheme.”

*Section 9A: procedures etc*

- 8 (1) Amend section 9A (procedures to be followed in investigations etc) as follows.
- (2) In subsection (5)(a) for “section 6A(3)” substitute “sections 6A(3) and 7E(3)”.
- (3) In subsection (6) after paragraph (c) insert –
- “(ca) the Speaker of the House of Lords,
  - (cb) the Leader of the House of Lords,
  - (cc) the House of Lords Committee for Privileges and Conduct.”

*Section 9B: enforcement*

- 9 In section 9B (enforcement) after subsection (2) insert –
- “(3) The Compliance Officer may provide to the House of Lords Commissioner for Standards any information connected with an investigation under section 9 or action taken under Schedule 4 which the Compliance Officer considers may be relevant to the work of the House of Lords Commissioner for Standards.”

*Section 10: offence of providing false or misleading information for allowances claims*

- 10 (1) Amend section 10 (offence of providing false or misleading information for allowances claims) as follows.
- (2) After subsection (1) insert –
- “(1A) A member of the House of Lords commits an offence if the member –
- (a) makes a claim under the House of Lords allowances scheme, and
  - (b) provides information for the purposes of the claim that the member knows to be false or misleading in a material respect.”
- (3) In subsection (2), after “subsection (1)” insert “or (1A)”.

*Section 10A: relationships with other bodies etc*

- 11 (1) Amend section 10A (relationship with other bodies) as follows.
- (2) In subsection (1) after paragraph (a) insert –
- “(aa) the House of Lords Commissioner for Standards.”.
- (3) In subsection (3) after “House of Commons” insert “or the House of Lords”.
- (4) In subsection (4) –
- (a) after “a member of the House of Commons” insert “or a member of the House of Lords”, and
  - (b) in paragraph (b) after “the House of Commons” insert “or the House of Lords”.
- (5) In subsection (5) –
- (a) the words from “to a member” to the end become paragraph (a), and
  - (b) after that paragraph insert “, and
- “(b) to a member of the House of Lords, include a former member of the House of Lords.”

*Section 12: interpretation*

- 12 (1) Amend section 12 (interpretation) as follows.
- (2) In subsection (1) –
- (a) after the definition of “the Compliance Officer” insert –
- “‘the House of Lords allowances scheme’ has the meaning given by section 7C(2);”, and

- (b) after the definition of “the Leader of the House of Commons” insert—

““the Leader of the House of Lords” means the Minister of the Crown who is for the time being designated as Leader of the House of Lords by the Prime Minister;”.

- (3) After subsection (4) insert—

- “(5) In this Act—

- (a) references to the House of Lords Committee for Privileges and Conduct are to the committee of the House of Lords concerned with the conduct of members of the House of Lords, and
- (b) references to the House of Lords Commissioner for Standards are to the officer of the House of Lords responsible for investigations into the conduct of members of the House of Lords.

- (6) Any question arising under subsection (5) is to be determined by the Speaker of the House of Lords.”

*Schedule 1: the IPSA*

- 13 (1) Amend Schedule 1 (the IPSA) as follows.
- (2) In paragraph 1(4) and (5) for “the House of Commons” substitute “either House of Parliament”.
- (3) In paragraph 2—
  - (a) in sub-paragraphs (1) and (2) for “the House of Commons” substitute “both Houses of Parliament”,
  - (b) in sub-paragraph (3) for “only with the agreement of the Speaker” substitute “—
    - (a) in the House of Commons, only with the agreement of the Speaker of the House of Commons, and
    - (b) in the House of Lords, only with the agreement of the Speaker of the House of Lords”,
  - (c) in sub-paragraph (4) omit “by the Speaker” and after “competition” insert “by the Speaker of the House of Commons and the Speaker of the House of Lords”, and
  - (d) in sub-paragraph (5)—
    - (i) for “Speaker” substitute “Speakers”, and
    - (ii) for “Speaker’s” substitute “Speakers”.
- (4) In paragraph 3(2) for “the Speaker” substitute “the Speaker of the House of Commons and the Speaker of the House of Lords”.
- (5) In paragraph 5(1) and (2) for “the Speaker” substitute “the Speaker of the House of Commons and the Speaker of the House of Lords”.
- (6) In paragraph 18—
  - (a) in sub-paragraph (1) after paragraph (c) insert—
    - (d) section 7A (House of Lords salaries) so far as relating to the payment (but not the determination) of salaries,

- (e) section 7C(1) (payment of House of Lords allowances), and
- (f) section 7D (dealing with House of Lords allowances claims) (except as mentioned in subparagraph (2) below).”, and
- (b) in sub-paragraph (2) after paragraph (aa) insert–
  - “(ab) sections 7A and 7B (House of Lords salaries) (except as mentioned in sub-paragraph (1) above),
  - (ac) section 7C(3) and (4) (preparing and revising House of Lords allowances scheme),
  - (ad) section 7D(9) (determining procedures for publication of allowances claims),”.
- (7) In paragraph 20(4)–
  - (a) in paragraph (a) for “section 4” substitute “sections 4 and 7A”, and
  - (b) in paragraph (b) after “MPs’ allowances scheme” insert “and the House of Lords allowances scheme”.
- (8) In paragraph 22–
  - (a) in sub-paragraph (2) for “Speaker’s” substitute “Speakers”, and
  - (b) in sub-paragraphs (6) and (7) after “Speaker” insert “of the House of Commons”.
- (9) In paragraph 25–
  - (a) in sub-paragraph (1) omit “and the Speaker must lay before each House of Parliament”,
  - (b) after that sub-paragraph insert–
    - “(1A) The IPSA must send the report to the Speaker of the House of Commons and the Speaker of the House of Lords.
    - (1B) The Speaker of the House of Commons must lay the report before the House of Commons, and the Speaker of the House of Lords must lay the report before the House of Lords.”, and
  - (c) in sub-paragraph (2) for “the Speaker lays” substitute “the Speakers lay”.
- (10) In paragraph 27(2)–
  - (a) in paragraph (b) for “, and” substitute “of the House of Commons,” and
  - (b) after paragraph (c) insert–
    - “(d) the Leader of the House of Lords,
    - (e) the Speaker of the House of Lords, and
    - (f) the House of Lords Committee for Privileges and Conduct.”
- (11) In paragraph 29(2) omit the definition of “the Speaker” (and the “and” before it).

*Schedule 2: Compliance Officer for the IPSA*

- 14 In paragraph 8 of Schedule 2 (Compliance Officer’s annual report)–

- (a) in sub-paragraph (2) for “, who must lay it before each House of Parliament” substitute “and the Speaker of the House of Lords”,
- (b) after that sub-paragraph insert –
  - “(2A) The Speaker of the House of Commons must lay the report before the House of Commons, and the Speaker of the House of Lords must lay the report before the House of Lords.”, and
- (c) in sub-paragraph (3) for “the Speaker lays” substitute “the Speakers lay”.

*Schedule 3: Speaker’s Committee for the IPSA*

- 15 (1) Amend Schedule 3 (Speaker’s Committee for the IPSA) as follows.
- (2) In the heading to the Schedule, for “Speaker’s” substitute “Speakers”.
- (3) In paragraph 1 –
  - (a) for “Speaker’s” substitute “Speakers”,
  - (b) in paragraph (d) for “five” substitute “three”,
  - (c) omit “and” at the end of that paragraph,
  - (d) after that paragraph insert –
    - “(da) the Speaker of the House of Lords,
    - (db) the Leader of the House of Lords,
    - (dc) the person who chairs the House of Lords Committee for Privileges and Conduct,
    - (dd) three members of the House of Lords who are not Ministers of the Crown, appointed by the House of Lords, and”, and
  - (e) in paragraph (e) for “the House of Commons” substitute “each House of Parliament”.
- (4) In paragraph 2(1) –
  - (a) after “paragraph 1(d)” insert “or (dd)”, and
  - (b) in paragraph (b) after “House of Commons” insert “or a member of the House of Lords (as the case may be)”.
- (5) In paragraph 2A –
  - (a) in sub-paragraph (2) for “only with the agreement of the Speaker of the House of Commons” substitute “–
    - (a) in the House of Commons, only with the agreement of the Speaker of the House of Commons, and
    - (b) in the House of Lords, only with the agreement of the Speaker of the House of Lords.”,
  - (b) in sub-paragraph (3) for “the Speaker” substitute “the Speaker of the House of Commons and the Speaker of the House of Lords”, and
  - (c) in sub-paragraph (8) –
    - (i) after “Speaker of the House of Commons” insert “and the Speaker of the House of Lords”, and
    - (ii) for “Speaker” substitute “Speakers”.
- (6) In paragraph 3 –

- (a) for sub-paragraph (1) substitute—
  - “(1) The Committee may establish sub-committees.
  - (1A) The functions of the Committee under paragraph 22 of Schedule 1 (review of the IPSA’s estimates) are to be exercised by a sub-committee of the Committee which does not include any member of the House of Lords.
  - (1B) Subject to that, the Committee may determine its own procedure and the procedure of its sub-committees (including quorums).”, and
- (b) in sub-paragraph (2) after “Committee” insert “or a sub-committee”.

*Schedule 4: enforcement*

- 16 (1) Amend Schedule 4 (enforcement) as follows.
- (2) In paragraph 1—
  - (a) in sub-paragraph (1)(a) for “section 9” substitute “section 9(1)(a) or a member of the House of Lords under section 9(1)(b)”,
  - (b) in sub-paragraphs (1)(b) and (3) after “MPs’ allowances scheme” insert “or the House of Lords allowances scheme”, and
  - (c) in sub-paragraph (8) the words from “to a member” to the end become paragraph (a), and after that paragraph insert “, and
    - (b) to a member of the House of Lords, include a former member of the House of Lords.”
- (3) In paragraph 5—
  - (a) in sub-paragraph (3) for “The” substitute “Where the repayment direction was given following an investigation under section 9(1)(a), the”, and
  - (b) after that sub-paragraph insert—
    - “(3A) Where the repayment direction was given following an investigation under section 9(1)(b), the IPSA may recover the amount by making deductions from—
      - (a) any salary payable to the member under section 7A;
      - (b) any allowances payable to the member under the House of Lords allowances scheme.”
- (4) In paragraph 6—
  - (a) in sub-paragraph (1) after “member of the House of Commons” insert “or a member of the House of Lords”, and
  - (b) in sub-paragraph (6) the words from “to a member” to the end become paragraph (a), and after that paragraph insert “, and
    - (b) to a member of the House of Lords, include a former member of the House of Lords.”
- (5) In paragraph 7(5) for “the House of Commons” substitute “each House of Parliament”.
- (6) In paragraph 12—
  - (a) in sub-paragraph (3) for “The” substitute “Where the penalty was imposed following an investigation under section 9(1)(a), the”, and

(b) after that sub-paragraph insert –

- “(3A) Where the penalty was imposed following an investigation under section 9(1)(b), the IPSA may recover the amount by making deductions from –
- (a) any salary payable to the member under section 7A;
  - (b) any allowances payable to the member under the House of Lords allowances scheme.”

(7) In paragraph 13(b) after “12(3)” insert “or (3A)”.

### PART 3

#### TRANSFER SCHEMES

17 (1) The Minister may by order provide –

- (a) for the employment of persons of a specified description who are employed in connection with matters relating to allowances for members of the House of Lords to be transferred to the IPSA by a scheme,
- (b) for specified property, rights and liabilities which subsist wholly or mainly for the purposes of the House of Lords to be transferred to the IPSA by a scheme, and
- (c) for specified documents and information held by or on behalf of the House of Lords (or an officer or committee of the House of Lords) to be transferred to the Compliance Officer or the IPSA.

(2) A scheme made by virtue of sub-paragraph (1) is to be made by the Minister with the consent of the Speaker of the House of Lords.

### SCHEDULE 8

Section 63

#### CONSEQUENTIAL AMENDMENTS

*Act of Settlement (1700 c. 2)*

1 In section 1 of the Act of Settlement 1700 (succession to the throne) for “said Lords Spirituall and Temporall” substitute “House of Lords”.

*Parliamentary Privilege Act 1770 (c. 50)*

2 In section 1 of the Parliamentary Privilege Act 1770 (legal proceedings against members of either House of Parliament) for “peer or lord of Parliament of Great Britain” substitute “member of the House of Lords”.

*Parliamentary Oaths Act 1866 (c. 19)*

- 3 (1) Amend the Parliamentary Oaths Act 1866 as follows.
- (2) In section 3 (time and manner of taking Parliamentary oath) for “House of Peers” (in both places) substitute “House of Lords”.
- (3) In section 5 (penalty for voting or sitting without taking oath) –

- (a) for “House of Peers” (in both places) substitute “House of Lords”, and
- (b) omit “as a peer”.

*Forfeiture Act 1870 (c. 23)*

- 4 In section 2 of the Forfeiture Act 1870 (persons convicted of treason disqualified from membership of Parliament) for “either House of Parliament” substitute “the House of Commons”.

*Bishoprics Act 1878 (c. 68)*

- 5 The Bishoprics Act 1878 is repealed.

*Life Peerages Act 1958 (c. 21)*

- 6 In section 1 of the Life Peerages Act 1958 (power to create life peerages carrying right to sit in House of Lords) omit—
- (a) paragraph (b) of subsection (2) (and the “and” before it),
  - (b) subsection (4), and
  - (c) in the heading “carrying right to sit in the House of Lords”.

*Peerage Act 1963 (c. 48)*

- 7 (1) Amend the Peerage Act 1963 as follows.
- (2) In section 1(2) (instruments of disclaimer) omit from “and no such instrument” to the end.
- (3) Omit section 4 (Scottish peers entitled to receive writs of summons).
- (4) Omit section 6 (peeresses in own right entitled to receive writs of summons).

*Recess Elections Act 1975 (c. 66)*

- 8 (1) Amend the Recess Elections Act 1975 as follows.
- (2) In section 1 (issue of warrants by Speaker for making out writs)—
- (a) in subsection (1)(a) omit “or become disqualified as a peer for membership of the House of Commons”,
  - (b) in subsection (2), in paragraph (a) of the definition of “certificate of vacancy” omit “, become disqualified as a peer for membership of the House of Commons”, and
  - (c) in that subsection, in the definition of “disqualifying office” after “Northstead,” insert “or the office of member of the House of Lords,.”
- (3) In Schedule 1 (certificate of vacancy) omit “[that Member of Parliament for has become disqualified as a peer for membership of the House of Commons;]”.

*Interpretation Act 1978 (c. 30)*

- 9 (1) Amend Schedule 1 to the Interpretation Act 1978 (words and expressions defined) as follows.
- (2) In the definition of “Parliamentary Election”—

- (a) for “in Parliament” substitute “in the House of Commons”, and
- (b) after “constituency” insert “; and references to a parliamentary general election or a parliamentary by-election are to be construed accordingly.”

(3) At the appropriate place insert—

““House of Lords election” means the election of a person to serve as an elected member of the House of Lords for an electoral district.”

*Senior Courts Act 1981 (c. 54)*

- 10 In section 142(1) of the Senior Courts Act 1981 (selection of judges for trial of election petitions) for “members of the House of Lords” substitute “transitional members of the House of Lords”.

*Representation of the People Act 1983 (c. 2)*

- 11 (1) Amend the Representation of the People Act 1983 as follows.
- (2) In section 7B(7)(a) (declaration of local connection) omit “by a person who is as a peer subject to a legal incapacity to vote at parliamentary elections or”.
- (3) In section 15(5)(a) (service declaration) omit “by a person who is as a peer subject to a legal incapacity to vote at parliamentary elections, or”.

*Repatriation of Prisoners Act 1984 (c. 47)*

- 12 (1) Amend the Schedule to the Repatriation of Prisoners Act 1984 (operation of certain enactments in relation to the prisoner) as follows.
- (2) In paragraph 7—
  - (a) after “1981” insert “or section 47 of the House of Lords Reform Act 2011”, and
  - (b) after “Commons” insert “or the House of Lords”.
- (3) In the heading immediately preceding paragraph 7 after “1981” insert “and the House of Lords Reform Act 2011”.

*Representation of the People Act 1985 (c. 50)*

- 13 (1) Amend the Representation of the People Act 1985 as follows.
- (2) Omit section 3 (extension of the franchise for European Parliamentary elections to peers resident outside the UK).
- (3) In section 27(2) (interpretation) for “to 3” substitute “and 2”.

*Insolvency Act 1986 (c. 45)*

- 14 (1) Amend the Insolvency Act 1986 as follows.
- (2) In section 426A (disqualification from Parliament: England and Wales)—
  - (a) in subsection (1) omit paragraphs (b) and (c),
  - (b) omit subsection (4),
  - (c) in subsections (5) and (6) omit “or the House of Lords”, and

- (d) in the heading for “**Parliament**” substitute “**House of Commons**”.
- (3) In section 427 (disqualification from Parliament: Scotland and Northern Ireland)–
- (a) omit subsection (1)(a),
  - (b) in subsection (1)(c) for “either House” substitute “that House or a joint committee of both Houses”,
  - (c) omit subsection (3),
  - (d) in subsection (5) omit “lord of Parliament or” and “to the Speaker of the House of Lords or, as the case may be,”, and
  - (e) in the heading for “**Parliament**” substitute “**House of Commons etc**”.

*Ministerial and Other Pensions and Salaries Act 1991 (c. 5)*

- 15 (1) Amend the Ministerial and other Pensions and Salaries Act 1991 as follows.
- (2) Omit section 5 (allowances for certain office holders in House of Lords).
  - (3) Omit section 8(2) (financial provision relating to allowances under section 5).

*Finance Act 1996 (c. 8)*

- 16 In section 200(3) of the Finance Act 1996 (domicile of overseas electors for inheritance tax and capital gains tax purposes) omit paragraph (b) (and the “or” before it).

*Scotland Act 1998 (c. 46)*

- 17 In section 16(1) of the Scotland Act 1998 (disqualification from membership of Scottish Parliament) for the words from “because” to the end substitute “because the person is disqualified from being elected to the House of Commons by section 55 of the House of Lords Reform Act 2011 (temporary disqualification of former members of the House of Lords).”

*Northern Ireland Act 1998 (c. 47)*

- 18 In section 36(6) of the Northern Ireland Act 1998 (disqualification from membership of Northern Ireland Assembly) for the words from “that” to the end substitute “that the person is disqualified from being elected to the House of Commons by section 55 of the House of Lords Reform Act 2011 (temporary disqualification of former members of the House of Lords).”

*House of Lords Act 1999 (c. 34)*

- 19 The House of Lords Act 1999 is repealed.

*Representation of the People Act 2000 (c. 2)*

- 20 Omit paragraph 4 of Schedule 2 to the Representation of the People Act 2000 (which inserted section 3 of the Representation of the People Act 1983).

*Political Parties, Elections and Referendums Act 2000 (c. 41)*

- 21 (1) Amend the Political Parties, Elections and Referendums Act 2000 as follows.

- (2) In section 5(2) (duty of Electoral Commission to report on elections) after paragraph (a) insert—  
“(aa) a House of Lords election.”.
- (3) In section 7(2) (Electoral Commission to be consulted on changes to electoral law) after paragraph (i) insert—  
“(j) an order under section 9(1) of the House of Lords Reform Act 2011 (power to make provision about House of Lords elections etc).”.
- (4) In section 8(3) (certain powers exercisable only on the Electoral Commission’s recommendation) after paragraph (c) insert—  
“(d) the making of orders under section 9(1) of the House of Lords Reform Act 2011 so far as relating to the matters mentioned in subsection (2)(f) of that section (limitation of expenses in connection with House of Lords elections).”.
- (5) In section 54(8) (permissible donors: definition of “electoral register”) omit paragraph (c) (and the “or” before it).
- (6) Omit section 141(b) (which amended section 3 of the Representation of the People Act 1985).

*House of Commons (Removal of Clergy Disqualification) Act 2001 (c. 13)*

- 22 (1) Amend the House of Commons (Removal of Clergy Disqualification) Act 2001 as follows.
- (2) In section 1 (removal of clergy disqualification) omit—  
(a) subsection (2), and  
(b) subsection (3)(a) (and the “and” after it).
- (3) Omit Schedule 1 (consequential amendments).

*European Parliamentary Elections Act 2002 (c. 24)*

- 23 (1) Amend the European Parliamentary Elections Act 2002 as follows.
- (2) In section 8 (persons entitled to vote)—  
(a) in subsection (1) for “any of subsections (2) to (5)” substitute “subsection (2) or (5)”, and  
(b) omit subsections (3), (4) and (7).
- (3) In section 10(2) (disqualification from membership of European Parliament)—  
(a) omit paragraphs (a) and (b),  
(b) omit “or” at the end of paragraph (c), and  
(c) after paragraph (d) insert “, or  
(e) he is disqualified from being elected to the House of Commons by section 55 of the House of Lords Reform Act 2011 (temporary disqualification of former members of the House of Lords).”
- (4) In paragraph 6(1) of Schedule 1A (periodic reviews of distribution of MEPs) in the definition of “relevant register” omit paragraph (c).

*Constitutional Reform Act 2005 (c. 4)*

- 24 In section 137 of the Constitutional Reform Act 2005 (parliamentary disqualification) omit subsections (3) to (5).

*Electoral Administration Act 2006 (c. 22)*

- 25 Omit paragraph 17 of Schedule 1 to the Electoral Administration Act 2006 (which amended section 3 of the Representation of the People Act 1985).

*Government of Wales Act 2006 (c. 32)*

- 26 In section 17(1) of the Government of Wales Act 2006 (disqualification from membership of Welsh Assembly) for the words from the second “is” to the end substitute “is disqualified from being elected to the House of Commons by section 55 of the House of Lords Reform Act 2011 (temporary disqualification of former members of the House of Lords).”

*Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)*

- 27 (1) Amend the Police, Public Order and Criminal Justice (Scotland) Act 2006 as follows.
- (2) In paragraph 3 of Schedule 1 (membership of the Scottish Police Services Authority) –
- (a) in sub-paragraph (9)(b) after paragraph (i) insert –  
“(ia) the House of Lords;”, and
  - (b) after sub-paragraph (9) insert –  
“(9A) A person is not disqualified by sub-paragraph (9)(b)(i) merely because the person is disqualified from being elected to the House of Commons by section 55 of the House of Lords Reform Act 2011 (temporary disqualification of former members of the House of Lords).”

*Income Tax Act 2007 (c. 3)*

- 28 In section 835B(3) of the Income Tax Act 2007 (domicile of overseas electors for income tax purposes) omit paragraph (b) (and the “or” before it).

*The European Parliament (House of Lords Disqualification) Regulations 2008 (S.I. 2008/1647).*

- 29 The European Parliament (House of Lords Disqualification) Regulations 2008 are revoked.

*Constitutional Reform and Governance Act 2010 (c. 25)*

- 30 Amend the Constitutional Reform and Governance Act 2010 as follows.
- 31 (1) In the heading to Part 4 (tax status of MPs and members of the House of Lords) omit “AND MEMBERS OF THE HOUSE OF LORDS”.
- (2) In section 41 (tax status of MPs and members of the House of Lords) omit –

- (a) subsections (1)(b) (and the “or” preceding it), (5), (6), (8)(b) (and the “and” preceding it) and (10), and
    - (b) in the heading **“and members of the House of Lords”**.
  - (3) Omit section 42 (tax status of members of the House of Lords: transitional provision).
  - (4) In section 52(3) (commencement) omit –
    - (a) paragraph (a), and
    - (b) paragraph (b).
- 32 In Schedule 5 (amendments of Parliamentary Standards Act 2009) omit paragraph 2.

## SCHEDULE 9

Section 63

### TRANSITIONAL PROVISION AND SAVINGS

*Section 59 and Schedule 7: consultation provisions relating to salaries and allowances*

- 1 (1) This paragraph applies in relation to –
  - (a) the IPSA’s first determination under section 9A(1) and (5) of the PSA 2009 of procedures relating to members of the House of Lords;
  - (b) the first guidance and the first scheme prepared by the IPSA under paragraph 2 of Schedule 4 to that Act in relation to members of the House of Lords;
  - (c) the first specification of matters by the IPSA under paragraph 8 of that Schedule in relation to members of the House of Lords;
  - (d) the first guidance prepared by the IPSA under paragraph 9 of that Schedule in relation to members of the House of Lords.
- (2) Section 9A(6) of that Act applies as if paragraphs (a) to (c) were omitted.
- 2 The amendments made to paragraph 27(2) of Schedule 1 to the PSA 2009 by paragraph 13(10) of Schedule 7 do not affect the validity of the publication scheme which –
  - (a) has been adopted by the IPSA under section 19 of the Freedom of Information Act 2000, and
  - (b) has effect immediately before those amendments come into force.
- 3 The amendments made to section 9A(6) of the PSA 2009 by paragraph 8(3) of Schedule 7 do not affect the validity of anything which –
  - (a) has been determined, specified or prepared under that section or any of the other provisions of that Act to which section 9A(6) is relevant, and
  - (b) has effect immediately before those amendments come into force for the purpose of the provision in question.

*Schedule 7: membership of the IPSA and the Speakers’ Committee for the IPSA*

- 4 (1) The amendments made to Schedule 1 to the PSA 2009 by paragraph 13(2) to (4) of Schedule 7 do not affect a person holding office as a member of the

IPSA by virtue of an appointment made before the amendments come into force.

- (2) The amendments made to Schedule 3 to the PSA 2009 by paragraph 15 of Schedule 7 do not affect a person holding office as a member of the Speakers' Committee for the IPSA by virtue of an appointment made under paragraph 1(e) of that Schedule before the amendments come into force.

*Section 61: removal of disqualification on peers voting at elections to either House*

- 5 (1) This paragraph applies if section 61(1) (peers not disqualified from voting) comes into force before the day of the poll for the first qualifying parliamentary general election (“the 1st polling day”).
- (2) In this paragraph—
- (a) “relevant peer” means a peer who, prior to the coming into force of section 61(1), is subject to a legal incapacity to vote as the holder of a peerage, and
  - (b) “interim period” means the period beginning with day on which that provision comes into force and ending with the day before the 1st polling day.
- (3) A relevant peer who would, apart from this sub-paragraph, be entitled at a time during the interim period to vote as an elector at a parliamentary election in a constituency, is to be treated as if the peer were not so entitled to vote.
- (4) In relation to a relevant peer, any legal incapacity to vote under subparagraph (3) is to be ignored for the purposes of—
- (a) section 4(1)(b) of the Representation of the People Act 1983 (entitlement to be registered as a parliamentary elector), and
  - (b) section 1(1)(b)(i) of the Representation of the People Act 1985 (entitlement to vote as an overseas elector) in so far as that provision relates to legal incapacity to vote on the relevant date (within the meaning of that section).
- 6 (1) In relation to a relevant peer, any reference in section 1(3) or (4)(b) of the Representation of the People Act 1985 (conditions as to qualification as an overseas elector) to a register of parliamentary electors is to be read as including—
- (a) any register of local government electors in Great Britain, and
  - (b) any register of local electors in Northern Ireland,
- which was required to be published on any date before the day on which section 61(1) comes into force.
- (2) “Relevant peer” has the same meaning as in paragraph 5.

*Section 61: removal of disqualification on peers being elected as members of either House*

- 7 (1) This paragraph applies if section 61(2) (peers not disqualified from membership of either House of Parliament) comes into force before the day of the poll for the first qualifying parliamentary general election.
- (2) In this paragraph “relevant peer” means a peer who, prior to the coming into force of section 61(2), is disqualified as the holder of a peerage from membership of the House of Commons.

- (3) Section 61(2) does not apply, in the case of a relevant peer, to membership of the House of Commons as a result of being elected at a parliamentary election before the first qualifying parliamentary general election.

*Schedule 8: repeal of the Bishoprics Act 1878*

- 8 The repeal of the Bishoprics Act 1878 by paragraph 5 of Schedule 8 does not affect the continued operation in relation to that Act of the saving at the end of Part 2 of Schedule 1 to the Statute Law Repeals Act 1973 (which continues in force Orders in Council and schemes made under certain repealed enactments).

*Section 60 and Schedule 8: tax status of members of the House of Lords*

- 9 (1) The amendments made by paragraph 31(1), (2) and (4)(a) of Schedule 8 apply—
- (a) where the relevant meeting of the House of Lords takes place on the first day of a tax year, in relation to that tax year and subsequent tax years, and
  - (b) otherwise, in relation to tax years after the tax year in which the relevant meeting of the House of Lords takes place.
- (2) Where the relevant meeting of the House of Lords does not take place on the first day of a tax year (so that section 41 of the Constitutional Reform and Governance Act 2010 and section 60 of this Act both apply to the House of Lords in the tax year in which that meeting takes place)—
- (a) in applying section 41 of the Constitutional Reform and Governance Act 2010 to that tax year, ignore a person’s membership of the House of Lords after the beginning of the first transitional period, and
  - (b) in applying section 60 of this Act to that tax year, ignore a person’s membership of the House of Lords before the beginning of that period.
- (3) The “relevant meeting of the House of Lords” means the first meeting of the House of Lords in the first transitional period.
- (4) “The tax year” has the same meaning as in section 60.

*Interpretation*

- 10 In this Schedule, “the PSA 2009” and “the IPSA” have the same meaning as in Schedule 7.



# DRAFT HOUSE OF LORDS REFORM BILL

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## EXPLANATORY NOTES

1. These explanatory notes relate to the draft Bill on reform of the House of Lords published in May 2011. They have been prepared by the Cabinet Office in order to assist the reader of the draft Bill and to help inform debate on it. These explanatory notes do not form part of the draft Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft clauses. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### SUMMARY

3. The draft Bill is divided into 9 Parts.

#### **Part 1 – Composition of the House of Lords**

4. Clause 1 sets out the eventual composition of the House of Lords (240 elected members, 60 appointed members, up to 12 Lords Spiritual and any ministerial members) and its composition during two transitional periods. The clause also confirms the breaking of the link between membership of the peerage and membership of the second chamber. Clause 2 provides that, with limited exceptions, nothing in the Bill affects the conventions governing the relationship between the two Houses of Parliament, the primacy of the House of Commons or the powers of each House. Clause 3 contains definitions of first, second transitional period and electoral period. Electoral period refers to the period between elections to the House of Lords while first and second transitional period refer to the two first electoral periods following the first House of Lords election.

#### **Part 2 - Elected Members**

5. Clause 4 provides for the first election to the House of Lords and for the frequency of subsequent elections. House of Lords elections are to take place at the same time as general elections to the House of Commons, except where a Commons election happens within two years of the previous House of Lords election.

6. Under clause 5, eighty Ordinary Elected Members are to be elected at each House of Lords election. The Government proposes that the number and the boundaries of electoral districts should be recommended by an independent body. The United Kingdom is to be divided into a number of electoral districts, each returning several members. When the Bill is introduced into Parliament it will make provision for those district boundaries and the number of ordinary elected members to be returned for each district. Under Schedule 2 it will also be the duty of the Electoral Commission to review the boundaries after every third set of elections to the House of

Lords. The Commission will make recommendations for varying the numbers of ordinary elected members to be returned from each electoral district so that the ratio of electors to ordinary elected members is as nearly as possible the same in each district. This is similar to the Commission's duties over the distribution of MEPs between the European parliamentary electoral regions under Schedule 1A to the European Parliamentary Elections Act 2002.

7. Under clause 6, the (non-renewable) term of office of an Ordinary Elected Member is to be three electoral periods i.e. roughly 15 years. Clause 7 provides that elected members of the House of Lords are to be elected by the single transferable vote system. Under the single transferable vote system a vote can be given so as to indicate the voter's order of preference for the candidates and can be transferred to the next choice where either the vote is not needed to give a prior choice the necessary quota of votes or a prior choice has been eliminated.

8. Under clause 8, those entitled to vote for elected members are to be the same as those entitled to vote for MPs, as set out in the Representation of the People Acts 1983 and 1985. Any remaining limitations on peers voting are removed (clause 61). Members of each House of Parliament will be able to vote in elections to both their own House and the other House.

9. Clause 9 gives the relevant Minister power to make secondary legislation about the conduct of House of Lords elections. This follows the position for Ministers' powers to make secondary legislation about the conduct of elections to the European Parliament, the Scottish Parliament and the National Assembly for Wales.

10. Clauses 10 to 15 and Schedule 3 provide for the filling of vacancies when a member ceases to be an elected member, for whatever reason. A vacancy is to be filled temporarily by a Substitute Elected Member until the next House of Lords election (unless the vacancy arises six months or less before that election). If the former member who caused the vacancy to arise was affiliated to a political party, the vacancy is to be offered to the candidate from the same party who failed to win a seat at the most recent House of Lords election in the electoral district where the vacancy exists, but who gained the highest number of votes. Where the vacancy occurs before the former member's final electoral period, an additional seat will be contested at the next House of Lords election to elect a Replacement Elected Member who will serve for the remainder of what would have been the former Member's term.

### **Part 3 - Appointed Members**

11. Clause 16 and Schedule 4 set up a House of Lords Appointments Commission. Clause 17 and Schedule 5 set up a Joint Committee on the Appointments Commission. Under clause 18 Her Majesty is to appoint 20 Ordinary Appointed Members after each House of Lords election (with an exception in clause 22 in certain cases where a vacancy has been filled). Like Ordinary Elected Members, Ordinary Appointed Members are to serve for three electoral periods (clause 19). Clauses 20 and 21 provide for the filling of vacancies and the length of term of a Replacement Appointed Member who fills such a vacancy. The Appointments Commission is to recommend people for appointment on merit on the basis of fair and open competition (clause 24), taking account of the principle that appointed members' contribution is not to be a party political contribution. Clause 25 provides for recommendations to be withdrawn where it appears that a person is disqualified.

#### **Part 4 – Lords Spiritual**

12. Clause 26 provides for the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester to continue to be members of the House of Lords, to serve as long as they hold those offices. Under clause 27 the Church of England may select a maximum of seven diocesan bishops as ordinary Lords Spiritual (or 16 and 11, from existing Lords Spiritual, in the first and second transitional periods) (clauses 27 and 28). Ordinary Lords Spiritual are to serve for one electoral period, if selected prior to the beginning of an electoral period, or for the remainder of an electoral period, if selected during the course of an electoral period (clause 29). Clauses 30 and 31 deal with the filling of vacancies and the term of office of a bishop who fills a vacancy. Clause 32 makes further provision about terms of office and clause 33 makes supplementary provision about Lords Spiritual.

#### **Part 5 - Ministerial Members**

13. Clause 34 provides for the Prime Minister to appoint people to serve as Ministers. They would be members of the House of Lords only for as long as they remain Ministers. Clause 34 provides a power for the Prime Minister to set out in secondary legislation detailed provisions relating to matters of appointment and numbers, matters of disqualification and cessation, prohibitions upon further service in the House of Lords, and matters relating to the payment of salaries and allowances for ministerial members.

#### **Part 6 - Transitional Members**

14. Clause 35 and Schedule 6 make provision for transitional members. In the first transitional period the maximum number of transitional members is to be two thirds of the number of peers entitled to receive writs of summons to attend the House of Lords on the day on which the Bill is presented in the House of Commons. In the second transitional period the maximum number is to be one third of that number, selected from the transitional members for the first period. Transitional members are to be chosen in accordance with standing orders of the House of Lords. They are to serve for one transitional period, but those who serve in the second transitional period will serve two transitional memberships as to be eligible to be a Transitional Member in the second transitional period the person must have previously served as a Transitional Member in the first transitional period.

#### **Part 7 - Disqualification**

15. This part sets out grounds for the disqualification of members of the House of Lords. In the case of elected members (clause 36) and appointed members (clause 38) they are similar to those which apply to members of the House of Commons, covering age (clauses 36 and 38), nationality, disqualifying office (clauses 36 and 38), insolvency and imprisonment for a criminal offence. Previous membership of the House of Lords is also a disqualifying ground under clauses 36 and 38.

16. A person is disqualified from being a Lord Spiritual if they do not meet the nationality condition in section 3 of the Act of Settlement or if they are an elected or an appointed member. That nationality condition, the insolvency ground and the serious offence ground apply to transitional members (clause 42). Special provision is made for transitional members who hold certain judicial offices (clause 44).

17. Where a member is disqualified under the insolvency or the serious offence ground and the insolvency order is annulled or the conviction quashed or sentence reduced to a period of less than one year, the prohibition on a person becoming a member more than once is disapplied (clause 48).

18. The serious offence ground applies where a person is imprisoned indefinitely or for more than a year for a criminal offence, wherever the conviction takes place and wherever the person is imprisoned, and whenever the offence occurred (clause 47). However, where the sentence or order was given outside the United Kingdom the House of Lords may resolve that the disqualification may be disregarded (clause 50).

19. The Bill follows the provisions of the House of Commons Disqualification Act 1975 in providing for the Privy Council to have jurisdiction in certain matters relating to disqualification (clauses 51 and 52).

20. Clauses 53 to 55 contain restrictions on membership of the House of Commons: members of the House of Lords are disqualified for membership of the Commons and there is also to be a cooling-off period of four years and one month after a person ceases to be a member of the House of Lords before they may become a member of the Commons. In addition, people may not stand for election to both Houses at the same time.

#### **Part 8 - General Provision about membership**

21. Clause 56 allows standing orders of the House of Lords to provide that the House of Lords may expel or suspend a member. Clause 57 allows members to resign.

22. Clause 58 allows for House of Lords proceedings not to be challenged or brought into question because of a vacancy within the membership of the House of Lords or for the inclusion of a person who should not have been participating i.e. a disqualified member.

23. Clause 59 and Schedule 7 amend the Parliamentary Standards Act 2009 (PSA 2009) to provide that members of the House of Lords (apart from Lords Spiritual) are to receive a salary and that all members may receive allowances. These are to be administered by the Independent Parliamentary Standards Authority (the IPSA). This is based on the House of Commons scheme.

24. Clause 60 follows section 41 of the Constitutional Reform and Governance Act 2010 (CRAG Act 2010) to provide that members of the House of Lords are to be treated as resident, ordinarily resident and domiciled in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax.

#### **Part 9 - Miscellaneous**

25. Clause 61 removes any remaining disqualification on peers from voting in elections, or being elected, to either House of Parliament. Clause 62 enables life peers to disclaim their peerage.

26. Clauses 63 to 68 are final provisions covering consequential and transitional provisions (see also Schedules 8 and 9), orders, interpretation, extent, commencement and the Bill's short title.

## BACKGROUND

27. In the Programme for Government (available at <http://www.cabinetoffice.gov.uk/news/coalition-documents>) the Government committed to a mainly or wholly elected second chamber:

“We agree to establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this bill will advocate single long terms of office. It is also likely there will be a grandfathering system for current Peers.”

28. On 7 June 2010 (Hansard column 47), the Deputy Prime Minister announced the establishment of a cross-party Committee to consider all the issues related to reform of the House of Lords. The Committee met seven times from June to December 2010.

## TERRITORIAL EXTENT

29. These clauses extend to the whole of the United Kingdom. They address matters relating to the Parliament of the United Kingdom which is an “excepted matter” under Schedule 2 to the Northern Ireland Act 1998, and a “reserved matter” under Schedule 5 to the Scotland Act 1998. Amendments to other legislation have the same extent as the legislation amended. The only exception is paragraph 21 of Schedule 4 (which deals the status as evidence of documents of the House of Lords Appointments Commission) which does not extend to Scotland.

30. No relevant powers have been transferred to the National Assembly for Wales or the Welsh Ministers, nor does it affect the functions of any of the devolved administrations.

## COMMENTARY ON CLAUSES

### **Clause 1: Composition of the House of Lords**

31. *Subsection (1)* specifies the composition of the House of Lords in the first transitional period as being 80 elected members, 20 appointed members, transitional members, up to 21 Lords Spiritual and any ministerial members.

32. *Subsection (2)* specifies the composition of the House of Lords in the second transitional period as being 160 elected members, 40 appointed members, transitional members, up to 16 Lords Spiritual and any ministerial members.

33. *Subsection (3)* states that, when fully reformed, the House of Lords is to consist of 300 members – 240 elected and 60 appointed - up to 12 Lords Spiritual and any ministerial members.

34. *Subsection (4)* confirms the breaking of the link between the peerage and membership of the second chamber. Anyone holding a peerage will no longer be entitled to receive writs of summons to attend the House of Lords by virtue of their peerage. “Peerage” is defined in clause 65(2) as a peerage conferred by section 1 of the Life Peerages Act 1958 (life peerage), a hereditary peerage or peerages conferred by virtue of appointment as a Lord of Appeal in Ordinary.

#### **Clause 2: General saving**

35. *Subsection (1)* provides that, with limited exceptions set out in *subsection (2)*, nothing in the Bill affects the primacy of the House of Commons, the conventions governing the relationship between the two Houses of Parliament, the powers of each House or the status of the House of Lords as such a House.

36. *Subsection (3)* clarifies that anything begun in the House of Lords prior to commencement of this Bill (for any purpose), but completed subsequent to commencement of the bill (again for any purpose) remains valid regardless of the legislative changes.

#### **Clause 3: Meaning of “first transitional period” etc**

37. *Subsections (1) and (2)* define the first and second transitional periods as the two electoral periods following the first House of Lords election. During these periods, in accordance with clauses 1, 27 and 35 and Schedule 6, some peers will continue to serve as members of the House of Lords and the number of seats reserved for the Lords Spiritual will be reduced.

38. *Subsection (3)*, which defines an “electoral period”, describes the period between elections to the House of Lords. Each electoral period starts on the day after an election to the House of Lords and ends on the day of the next election to the House of Lords.

#### **Clause 4: House of Lords elections**

39. *Subsections (1) and (2)* provide that elections to the House of Lords are to be held on the same day as qualifying general elections to the House of Commons.

40. *Subsection (3)* provides that the first election to the House of Lords will be held at the time of the first general election after the final Bill is passed, unless that is before 7 May 2015, in which case the first election will be held at the time of the first general election on or after that date.

41. *Subsection (4)* provides that there will be a minimum of two years between House of Lords elections. This means that if an election to the House of Commons is held within two years of the last elections to both Houses there will be no election to the House of Lords at that time and the House of Lords electoral period will be extended.

#### **Clause 5: Ordinary elected members and the electoral districts**

42. This clause lays out who is to be elected to the House of Lords, how many people are to be elected at each election, and where they are to be elected from.

43. *Subsection (1)* provides that 80 candidates are to be elected as members of the House of Lords at each House of Lords election. These members are called “ordinary

“elected members” to differentiate them from two other types of elected member who would be elected if an elected member’s seat became vacant. This could happen, for example, through the death, expulsion or resignation of an ordinary elected member.

44. *Subsections (2) and (3)* introduce Schedule 1, which defines the extent of the House of Lords electoral districts.

45. *Subsection (4)* introduces Schedule 2, which sets out how many members are to be elected in each district, and how this number would be reviewed from time to time. Both the initial distribution of members to districts, as well as all the subsequent reviews of this distribution, will be carried out according to the principle that the ratio of electors to elected members should be as nearly as is possible the same for each electoral district. It is therefore very likely that the number of elected members returned by each electoral district will vary on a district by district basis.

### **Schedule 1: Electoral Districts**

46. *Paragraph 1* sets out that the areas of the House of Lords electoral districts would be defined in Schedule 1 using a two-column table. The names of the House of Lords electoral districts would be listed in the left-hand column of the table, while the relevant area which will make up that district would be listed in the right-hand column.

47. *Paragraph 2* sets out that if the boundaries of the areas described in the right-hand column are changed for any reason, the boundaries of the House of Lords electoral district in the left-hand column would change in the same way. However, to avoid any confusion over the boundaries of a district during the course of a Parliament, the House of Lords electoral district boundary would only change at the next House of Lords election after the change to the area in the right-hand column had been made.

48. The table in Schedule 1 is yet to be determined. The Government will invite a group of experts to recommend suitable electoral district boundaries. The Government will take into account the group’s recommendations and set out the exact boundaries of the electoral districts so that they can be debated during the Bill’s passage through Parliament after pre-legislative scrutiny.

### **Schedule 2: Allocation of ordinary elected members**

49. Schedule 2 sets out how the number of members to be elected in each district would be decided, and how this number would be reviewed from time to time.

50. *Paragraph 1* sets out how many members would be elected in each electoral district. The exact numbers are yet to be determined. There would not necessarily be the same number of members elected in each district, and each district would have a minimum of three seats.

51. The number of members to be elected in each district would be reviewed periodically: *paragraph 2* sets out the way in which this will be done. The Electoral Commission would be required to carry out the review within 12 months of every third House of Lords election. This would usually mean that a review is carried out approximately every 15 years.

52. During the review, the Electoral Commission will be required to consider whether the ratio of voters to ordinary elected members is as nearly as possible the same in each of the House of Lords electoral districts. When it considers this question, the Commission will need to bear in mind that (a) the minimum number of ordinary elected members that can be elected in one constituency is three (b) only 80 ordinary elected members are allowed to be elected at each House of Lords election. The Commission will also be required to use the allocation method (known as the “Sainte-Laguë method”) described in paragraph 3.

53. If the Electoral Commission considered that the ratio of voters to ordinary elected members was as nearly as possible the same in each electoral district, it would submit a report with this conclusion to the relevant Government Minister (the Lord President of the Council or the Secretary of State) and no further action would be taken. If the Electoral Commission considered that the ratio of voters to ordinary elected members was not nearly as possible the same in each electoral district, then it would submit a report to the Minister with a recommendation about how this ratio could be made as nearly as possible the same in each district. In both cases, the Minister would lay the report before Parliament and the Electoral Commission would publish its report.

54. *Paragraph 3* sets out the allocation method (the Sainte-Laguë method) that the Electoral Commission is required to use. Under this method, the first ordinary elected member is allocated to the electoral district with the largest electorate (that is to say, the district with the largest registered electorate). The next ordinary elected members and subsequent members are allocated in the same way, except that the electorate of a district to which one or more members have already been allocated is divided by twice the number of members already allocated to that electoral district plus one. If two (or more) districts are equally entitled to a member, the member is allocated to that district, of those that are tied, with the smaller or smallest electorate. This is the same method which the Commission has previously recommended for elections to the European Parliament.

55. *Paragraphs 4 and 5* set out the steps to be taken if the Electoral Commission makes a recommendation to change the numbers of members elected in each district.

56. The Minister would consult the Electoral Commission and lay a draft order before Parliament, which is to be subject to approval by a resolution of each House of Parliament. This draft order would have to follow the Commission’s recommendation concerning how many members were to be elected in each district, and the Minister must consult the Electoral Commission before laying a draft. If both Houses agreed to the draft order, the Minister must make a final order in the terms of the approved draft.

57. If either House disagreed to the draft order, the Minister would need to consult the Electoral Commission again and lay a revised draft order before Parliament. However, the Minister may not revise the draft of an order so as to propose an allocation of ordinary elected members other than that originally recommended by the Electoral Commission, without the consent of the Electoral Commission. In considering the revised draft order, The Electoral Commission could only consent to the Minister’s revised draft order if it believed that the proposed numbers of members to be elected in each district could have been recommended under the criteria in

paragraph 2 (that the ratio of voters to ordinary elected members would be as nearly as possible the same in each electoral district). There would be no limit on the number of times a or both Houses of Parliament could disagree with a revised draft. When both Houses have agreed to a draft order or a revised draft order, the Minister must make a final order in the terms of the approved draft.

58. *Paragraph 6* defines a number of terms used in Schedule 2, such as who is to be considered an elector and how to calculate the total number of electors when the Electoral Commission conducts its periodic review and how the deadline for the Commission submitting its report to the Minister should be calculated.

#### **Clause 6: Ordinary elected member's term of office**

59. *Subsections (1) and (2)* provides for the term of office of an ordinary elected member, that is, an individual elected to serve a full term. Their term begins on the day on which they are declared to be returned after the House of Lords election and runs until the dissolution of the last Parliament of the third electoral period after their election. The period is expressed in electoral periods rather than Parliaments because it is possible that a House of Lords electoral period will comprise more than one Parliament, where a general election to the House of Commons takes place within two years of the last elections to both Houses of Parliament (See clause 4(4)). In this case no election to the House of Lords will take place and terms of all members of the House of Lords will continue.

60. *Subsection (3)* states that an ordinary elected member is entitled to receive writs of summons to attend the House of Lords. The writ calls the member to the House of Lords and gives them the right to sit in the House of Lords during their term of office. A new writ of summons will be issued for each Parliament during their term.

61. *Subsection (4)* states that the clause is subject to any provisions in this or other legislation relating to an ordinary elected member's membership or entitlement to receive writs of summons, and to any inherent jurisdiction of the House of Lords to suspend ordinary elected members. For example, that entitlement may be affected by an expulsion or suspension resolution of the House of Lords or by a person's otherwise ceasing to be a member.

62. *Subsection (5)* provides that if an ordinary elected member ceases to be such a member any writ of summons issued to them has no further effect and their seat is vacant.

#### **Clause 7: Voting system for House of Lords elections**

63. This clause sets out the key aspects of how the voting system (the “Single Transferable Vote”) would operate.

64. *Subsections (1) and (2)* specify that, at a House of Lords election, the number of members to be elected in each electoral district is the total number of elected members required for that district. That is, the number of ordinary elected members due to be elected (defined by Schedule 2), as well as any replacement elected members that need to be elected to fill a vacancy, the process for which is set out in clause 13.

65. *Subsection 3(a)* sets out that voters rank candidates in the numbered order in which they would prefer to see them elected as members of the House of Lords. Voters would be able to express a preference on their ballot paper for as many or as few candidates as they wished. In order to be elected a candidate would need to achieve a set number of votes (known as the Quota) calculated according to a set formula. Any candidate who had won a number of votes equal to or greater than the Quota would be elected.

66. If not all the seats available in the electoral district had been won by candidates winning a Quota of votes or more from first preference votes only, then *subsection 3(b)(i)*) stipulates that votes would be re-distributed from those candidates who had a “surplus” of votes (that is, those who had already been elected with more than a quota of votes). The Surplus votes would be re-distributed to candidates who did not yet have a Quota, according to the second and later preferences expressed on the Surplus ballot papers.

67. If at this stage it is still the case that not all the seats available in the electoral district had been won by candidates winning a Quota of votes, then the candidate with fewest votes would be eliminated, as set out in *subsection (3)(b)(ii)*). Their votes would be redistributed according to the second (or later) preferences on all the ballot papers where they were marked as the first preference. The process of re-distribution and elimination would continue until all the seats in the district had been won.

#### **Clause 8: Persons entitled to vote**

68. *Subsection (1)(a)* sets out the franchise for House of Lords elections, which is the same as that for elections to the House of Commons. This comprises a person who is registered in the register of Parliamentary electors for a constituency, who is not subject to any legal incapacity to vote, who is a Commonwealth citizen or a citizen of the Republic of Ireland and who is of voting age. Following the commencement of clause 61, peers will no longer be automatically disqualified from the Parliamentary franchise by virtue of their peerage, and so no longer subject to a legal incapacity to vote. Therefore, subject to the detailed provisions and commencement of clause 61, peers will be entitled to vote in elections to the House of Lords.

69. *Subsection (1)(b)* provides that a person must have a “qualifying address” in order to be entitled to vote at a House of Lords election. Additionally *subsection (2)* provides the requirements for a person to have a “qualifying address”. This requires the person to be registered in the relevant register of parliamentary electors at an address within the electoral district, or for the person to be so registered but by virtue of an overseas elector’s declaration that specifies an address within the electoral district.

70. *Subsection (3)* prohibits electors from entitlement to vote in more than one electoral district at a single House of Lords election or from entitlement to vote more than once in the same electoral district, at a single House of Lords election.

71. *Subsection (4)* provides that the qualifying criteria set out in subsections (1) are subject to any provision made under clause 9 permitting alterations made after a specified date in a register of electors to be disregarded.

**Clause 9: Powers to make provision about elections etc**

72. This clause sets out various powers that will be delegated to the relevant Government Minister, so that various detailed rules and regulations governing elections to the House of Lords could be set out in secondary legislation (also known as “subordinate legislation”). The powers are similar to those conferred in the Scotland Act 1998, the Government of Wales Act 2006 and the European Parliamentary Elections Act 2002 in respect of the elections which those Acts deal with.

73. *Subsections (1), (2) and (3)* lay out which sorts of rules the Minister will be allowed to provide for in an Order made under the clause. These are: rules about how elections to the House of Lords will be conducted; how the results of a particular election could be questioned; what the consequences of contravening any rules governing the election will be and how substitute elected members will be returned if a vacancy arose during a Parliament (for example, following the death of a member). Within those matters, provision in an Order may include: how electors will register to vote in elections to the House of Lords and under what circumstances electoral officials could disregard changes made to the electoral register; who will be designated the returning officer for each electoral district, and how this will be done; defining the duties of returning officers and local returning officers; making special arrangements to allow a House of Lords election to take place on the same day as another election; how much candidates standing for election will be allowed to spend in their campaign to be elected; ensuring that candidates do not stand for election in more than one electoral district at the same election; ensuring that parties do not field more candidates than there are seats available in an electoral district; determining the order in which candidates will appear on a House of Lords election ballot paper; setting out the procedure for deciding who is elected in cases where candidates win exactly the same number of votes.

74. *Subsection (4)* provides the Minister with a power to apply any existing legislation with modifications, including the provisions of the Representation of the People Acts, where this is necessary to allow for the smooth running of the House of Lords elections and other elections. It will also provide a power to amend Part 6 of this Bill, which deals with circumstances under which people will be disqualified from membership of the House of Lords. The Minister will additionally be able to create new criminal offences relating to the conduct or questioning of House of Lords elections.

75. *Subsection (5)* stipulates that the only way to question the validity of a candidate’s election to the House of Lords will be by using the procedure set out in the secondary legislation made by a Minister, who will be given the power to do this under clause 9(1).

76. *Subsection (6)* defines the term “local returning officer”.

77. *Subsections (7) and (8)* require councils that are wholly or partly contained within a House of Lords electoral district to make their staff available to the returning officer responsible for the House of Lords election so that the returning officer can effectively run the administration of the election process.

78. *Subsection (9)* sets out that, in Wales, there is a power to require various documentation relating to House of Lords elections to be provided in a Welsh-language version.

79. *Subsection (10)* sets out the definition of a “registered party”.

#### **Clause 10: Vacancies overview**

80. *Subsection 1(a)* explains that where there is a vacancy before the end of an elected member’s expected term, clause 11 and Schedule 3 to the Bill make provision for them to be replaced until the next House of Lords election (or in the circumstances set out in 11(7), the following election) by a substitute elected member.

81. *Subsection 1(b)* notes that where the term of elected member who created the vacancy had been due to continue beyond that election, clause 13 of the Bill sets out the process for the election of a replacement elected member for the remainder of the term.

82. *Subsection (2)* draws attention to the definition of the expected term of an elected member in clause 15 of the Bill, which in turn references clauses 6(1), 12(1) and 14(1).

#### **Clause 11 and Schedule 3: Substitute elected members**

83. *Subsection (1)* states that this section applies when there is a vacancy in the seat of an elected member before the end of their expected term (which *as subsection (7)* notes is set out in clause 15).

84. If the circumstances set out in *subsection (1)* are met, under *subsection (2)* a person is to be returned as a “substitute elected member” to fill the vacancy in line with the process set out in Schedule 3 to the Bill and, under *subsection (3)* subject to subsections (4) and (5) of the section.

85. *Subsection (4)* provides that the process to return a Substitute Elected Member set out in Schedule 3 will not take place when polling day for the next House of Lords election is less than 6 months from the day on which the vacancy occurs.

86. *Subsection (5)* notes that, if it proves impossible to fill the vacancy, in accordance with the process laid out in Schedule 3 the seat will remain vacant until the next House of Lords election.

87. *Subsection 6(a)* clarifies that where the Prime Minister makes an order under clause 1(5) of the Fixed Term Parliaments Bill (currently before Parliament) to bring the date of the election forward, this should only be taken into account in determining whether a vacancy occurs during a pre-election period if the order is made prior to the vacancy itself. *Subsection 6(b)* makes similar provision in relation to the power of Speaker if the House of Commons to certify that a vote of no-confidence has taken place (so that an early general election must be called).

88. *Subsection (7)* notes that *subsection (8)* applies in the following circumstances: where the person creating the vacancy is an Ordinary Elected Member

or a Two-Period Replacement Elected Member, and the vacancy occurs during a dissolution period.

89. The dissolution period for an Ordinary Elected Member is defined in *subsection 9* as the period between dissolution of Parliament and the end of either the first or second electoral periods of the Ordinary Elected Member's term.

90. The dissolution period for a Two-Period Replacement Elected Member is defined in *subsection (10)* as the period between dissolution of Parliament and the end of the Replacement Elected Member's first electoral period.

91. In these circumstances, *subsection (8)* provides that the vacancy should be treated as if it occurred on the first day of the subsequent electoral period. The purpose of this provision, which effectively defers a vacancy where it occurs very close to a House of Lords election at which a Replacement Elected Member would otherwise be required to be elected to an additional seat under clause 13, is to ensure there is certainty for all concerned as to how many seats are being contested in the relevant electoral district sufficiently in advance of the forthcoming election. In this scenario, the vacancy is therefore treated as if it occurred in the following electoral period. The Seat is then (under the provisions of Schedule 3) filled with either a single substitute elected member or a substitute elected member followed by a replacement elected member as appropriate according to the circumstances of the vacancy.

92. *Subsection (11)* clarifies the definitions of first and second electoral periods used in section 11.

93. *Subsection (12)* draws attention to the definition of the expected term of an elected member and a “two period replacement elected member” in clause 15.

### Schedule 3

94. *Paragraph 1* of Schedule 3 sets out the circumstances in which the Schedule applies. This reflects the conditions set out in clause 11. It notes that the terms “expected term” has the same meaning as it does in clause 11, and defines the terms “returning officer” and “electoral district”.

95. *Paragraph 2(1)* establishes that, where the circumstances in paragraph 1 occur, the returning officer must determine whether the previous elected member stood for one or more registered parties or as an independent candidate at the House of Lords election at which they were elected a member. *Paragraph 2(2)* explains that the “previous elected member” should refer to the Ordinary Elected Member or Replacement Elected Member who vacated the seat, or to the Ordinary Elected Member or Replacement Elected Member who held it prior to a previous substitution. *Paragraph 2(3)* clarifies where a person should be determined as having stood as an independent candidate.

96. *Paragraph 3(1)* provides that, having made the determination under paragraph 2, the returning officer must draw up the “appropriate list”. The appropriate list is defined in *paragraph 7*: which names appear on the list varies according to whether the “previous elected member” stood for election in the name of one party, multiple parties or as an independent. *Paragraphs 3(2) and 3(3)* then set out the procedure for

contacting, in order, those named on the appropriate list and in turn requesting them to sign and deliver the necessary declaration so that they can fill the vacancy. *Paragraph 3(5)* notes that if a person named on the list provides the necessary declaration, the Returning Officer must declare that that person is returned as a Substitute Elected Member, give public notice of the declaration, and send a copy of it to the Speaker of the House of Lords.

97. *Paragraph 4* details the process that applies where the previous elected member has been determined as having stood for one or more registered parties and the names on the appropriate list are exhausted without the returning officer receiving a declaration to allow them to declare a person returned as a Substitute Elected Member. In that situation the returning officer must draw up a secondary list and repeat the procedure set out in paragraph 3. (The secondary list is defined in *paragraph 8*). Paragraph 4(4) further notes that if the names on the secondary list are contacted and exhausted without the returning officer receiving the necessary declaration, then the seat will remain vacant until the next House of Lords election.

98. *Paragraph 5* refers to the process where the previous elected member stood as an independent candidate, and notes that where the names on the appropriate list are exhausted and no declaration has been made, the seat will be left vacant until the next House of Lords election.

99. *Paragraph 6* sets out that where a necessary declaration is received from a person who has been determined under paragraph 2 as standing in the name of one or more registered parties, then they are declared as returned in the name of that party or parties, except where the party or parties are no longer registered

100. *Paragraph 7* sets out the process by which the returning officer must draw up “the appropriate list”.

101. *Paragraphs 8 and 9* establish the nature and content of the “necessary declaration”.

102. *Paragraph 10* sets out the process by which the returning officer must draw up ‘the secondary list’.

103. *Paragraph 11* clarifies that the reference to names on the appropriate or secondary list being exhausted also includes the situation where there were no names to include on the list in the first place.

104. *Paragraph 12* establishes that the name of a substitute elected member should not be included on the appropriate or secondary list, where they were a Substitute Elected Member immediately before the vacancy occurred.

105. *Paragraph 13* clarifies that the total number of votes recorded for a candidate at a House of Lords election should, for the purposes of this Schedule, be taken to mean the total number of first preference and transferred votes recorded for the candidate at the conclusion of the count (i.e. after all the Ordinary Elected Member and Replacement Elected Member seats have been allocated).

### **Clause 12: Substitute elected member's terms of office**

106. *Subsection (1)* states that a Substitute Elected Member's term of office begins on the day the Returning Officer declares that they are returned under paragraph 3(5) of Schedule 3, and ends on the day Parliament is dissolved for that electoral period. This means that in practice a substitute elected member will usually serve a term of between 6 months and just under one electoral period.

107. *Subsection (2)* entitles the Substitute Elected Member to receive a writ of summons. The writ calls the member to the House of Lords and gives them the right to sit in the House of Lords during their term of office. *Subsection (4)* states that if the Substitute Elected Member's membership comes to an end (for example, if they became disqualified from membership) then any writ of summons issued will no longer allow them to exercise these rights, and the member's seat would be declared vacant.

108. *Subsection (3)* makes clear that a Substitute Elected Member's term of office and entitlement to receive a writ of summons is subject to: the provisions contained in the Bill; the provisions contained in any other legislation which relates to House of Lords membership or the entitlement to receive a writ of summons; and the power of the House of Lords to suspend a Substitute Elected Member.

### **Clause 13: Replacement elected members**

109. *Subsection (1)* sets out the circumstances in which the provisions on Replacement Elected Members apply. These are: where there is a vacancy in the seat of an elected Member before the end of their expected term; and where immediately prior to the vacancy, the elected member was an Ordinary Elected Member or a "Two-period Replacement Elected Member", and; where the vacancy occurs during that member's initial period.

110. *Subsection (7)* draws attention to clause 15 where the expected term of each of the different types of elected member is set out and the term "Two-period Replacement Elected Member" is defined.

111. *Subsection (2)* defines the initial period for an Ordinary Elected Member as beginning with the first electoral period after polling day at the House of Lords election where the Member was returned, and ending with the dissolution of Parliament concluding the second electoral period since they were returned. For a Two-period Replacement Elected Member the initial period commences with the first electoral period after the polling day for the House of Lords election where the Member was returned, and ending with the dissolution of Parliament concluding that electoral period.

112. *Subsection (3)* provides that, in these circumstances, at the relevant House of Lords election, an additional seat will be contested in the relevant electoral district to return a Replacement Elected Member. *Subsection (6)* specifies that this additional seat or seats will only be allocated after all the Ordinary Elected Member seats for that electoral district have been allocated in the count following the election.

113. *Subsection 4(a)* defines a “relevant House of Lords election” as the House of Lords election following the electoral period in which the vacancy occurred. Where this provision applies, as will generally be the case, the effect will be that a Replacement Elected Member is elected at the House of Lords election following a vacancy which occurs either in the first two periods of an Original Elected Member’s term or in the first period of a Two-period Replacement Elected Member’s term.

114. The exception to this is where the vacancy is created by an Ordinary Elected Member and it occurs during their dissolution period, which is defined in *subsection (5)* as the period between dissolution of Parliament at the conclusion of their first electoral period and the House of Lords election that follows. Here, under *subsection 4(b)*, the “relevant election” should be taken to mean the election at the conclusion of their second electoral period of service. The effect of this provision is that where a vacancy occurs very close to a House of Lords election at which a Replacement Elected Member would otherwise be required to be elected to an additional seat, then a Replacement Elected Member will instead be elected at the following House of Lords election for the remaining electoral period of the Ordinary Elected Member’s term, and in the mean time the seat will be filled with a period of service by a Substitute Elected Member under clause 11.

115. Where a vacancy occurs in the final electoral period of either an Original Elected Member’s or a two-period Replacement Member’s term, it will generally be filled by a Substitute Elected Member until the next House of Lords election when a new cohort of 80 members are elected for a full three-period term (which is usually 15 years). The seat concerned would then at that election be filled by a new Ordinary Elected Member in line with the standard cycle of elections.

#### **Clause 14: Replacement elected member’s terms of office**

116. *Subsection (1)* explains that a Replacement Elected Member’s term of office begins on the day on which the Returning Officer declares that the member has been elected and ends on the last day of the expected term of the Elected Member whom they replace. The effect of this is that replacement elected members will serve a term of either one or two electoral periods. One electoral period will usually be five years.

117. *Subsection (2)* entitles the Replacement Elected Member to receive a writ of summons. The writ calls the member to the House of Lords and gives them the right to sit in the House of Lords during their term of office.

118. *Subsection (3)* makes clear that a Replacement Elected Member’s term of office and entitlement to receive a writ of summons is subject to: the provisions contained in the Bill; the provisions contained in any other legislation which relates to House of Lords membership or the entitlement to receive a writ of summons; and the power of the House of Lords to suspend a replacement elected member.

119. *Subsection (4)* states that if the Replacement Elected Member’s membership comes to an end (for example, if they became disqualified from membership) then any writ of summons issued will no longer allow them to exercise the right to sit and vote in the House of Lords, and the member’s seat would be declared vacant.

120. *Subsection (5)* introduces clause 15.

### **Clause 15: Elected member’s “expected term”**

121. *Subsection (1)* defines the “expected term of an elected member” by reference to clauses 6(1) for Ordinary Elected Members, 12(1) for Substitute Elected Members and 14(1) for Replacement Elected Members. These apply for the purposes of clauses 10 to 15.

122. *Subsection (2)* states that if the return of an elected member is void under clauses 36(1) or 36(2), the expected term of office is to be considered as if the election was never declared void. This is necessary so that it is possible to properly calculate the terms of Substitute or Replacement Elected Members who fill the seat of elected members whose election was considered void. The terms of Substitute or Replacement Elected Members are, under clause 12(1) and clause 14(1) respectively, determined by reference to the expected term of the elected member they replace. This is done so as to ensure that substitute or replacement memberships respect the electoral timetable of the cohort of 80 members with whom the Ordinary Elected Member who originally held the seat was elected.

123. *Subsections (3) and (4)* define that a Replacement Elected Member serving a term of one electoral period shall be known as a “One-period Replacement Elected Member” and a replacement elected member serving a term of two electoral periods shall be known as a “Two-period Replacement Elected Member”.

### **Clause 16 and Schedule 4: The House of Lords Appointments Commission**

124. *Subsection (1)* establishes the House of Lords Appointments Commission as a body corporate. It replaces an existing Commission with the same name.

125. *Subsection (2)* introduces Schedule 4 which makes provision for the Commission.

### **Schedule 4: The House of Lords Appointments Commission**

126. Schedule 4 sets out the governance arrangements of the House of Lords Appointments Commission.

127. *Paragraph 1* provides that the composition of the Commission is to be of seven members appointed by Her Majesty on the recommendation of the Prime Minister (sub-paragraphs (1) and (3)). Her Majesty is to appoint one of the Commissioners as the chair (sub-paragraph (2)). Recommendations made by the Prime Minister are to be based on merit (sub-paragraph (4)). A Minister of the Crown may not be appointed as a Commissioner (sub-paragraph (5)), nor may a member of the House of Commons. A member of the House of Lords may be appointed as a Commissioner. Where a Commissioner is appointed as a Minister of the Crown their appointment comes to an end automatically (sub-paragraph (6)).

128. *Paragraph 2* states that Commissioners are to hold office in accordance with terms and conditions (sub-paragraph (1)) determined by the Joint Committee on the House of Lords Appointments Commission (sub-paragraph (2)).

129. *Paragraph 3* provides that the chair and other Commissioners are to serve for a fixed term of ten years which cannot be renewed (sub-paragraphs (1) and (3)). The

termination of an appointment as chair also leads to the ending of an appointment as a Commissioner (sub-paragraph (2)).

130. Resignation from the role of the chair of the Commission is by way of a written notice to the Prime Minister (*paragraph 4(1)*). Commissioners may tend their resignation letters to the chair of the Commission, or, if the position is vacant, to the Prime Minister (sub-paragraph (2)).

131. *Paragraph 5* deals with the removal of members of the House of Lords Appointments Commission from office. The chair and Commissioners may be removed from office by Her Majesty on an address of both Houses of Parliament (sub-paragraphs (1) and (2)). Prior to removal from office the Joint Committee must be satisfied that one or more removal conditions have been met and report it to either House (sub-paragraph (3)). There are five removal conditions listed under sub-paragraph (4), which are being absent from the Commission's meetings for three consecutive times without the Commission's consent; being convicted of an offence; being subject to a bankruptcy restrictions order or undertaking; being subject to a debt relief restrictions order or undertaking; being unable or unfit to carry out the duties of the role. Sub-paragraph (5) specifies that convictions for offences committed abroad are caught by sub-paragraph (4). Sub-paragraph (6) explains that the bankruptcy restrictions orders mentioned in sub-paragraph (4) are orders under specified provisions in the Insolvency Act 1986, the Bankruptcy (Scotland) Act 1985 and the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

132. *Paragraph 6* states that terms and conditions of employment may make provision for the payment of a salary and for the arrangement of a pension for the chair and any of the Commissioners (sub-paragraph (1)). Sub-paragraph (2) requires the Commission to make such payments of a salary and provision of a pension.

133. *Paragraph 7* provides that the Commission must provide a code of conduct for the chair and Commissioners which must be revised occasionally (sub-paragraph (1)). The code must include the Seven Principles of Public Life and provisions on disclosure of interests by the chair and the remaining Commissioners (sub-paragraph (2)). Sub-paragraph (3) explains the meaning of the Nolan principles – the Seven Principles of Public Life which are Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty and Leadership. The Commission is under a duty to submit the code, or revision, to the Joint Committee (sub-paragraph (4)). The code will come into effect once approved by the Joint Committee (sub-paragraph (5)).

134. *Paragraph 8* gives the Commission the power to do anything that is incidental to its work or which will facilitate the carrying out of its functions. This does not include the borrowing of money.

135. *Paragraph 9(1)* provides the Commission with the power to create committees and sub-committees and allows it to delegate its functions, excluding the functions listed under sub-paragraph (5) as specified in sub-paragraph (3), to them. All members of the committees and sub-committees must be Commissioners (sub-paragraph (2)). The Commission's functions may also be delegated to one of the Commissioners (sub-paragraph (4)). Sub-paragraph (5) states that the Commission may not delegate functions related to the preparation of a scheme for the selection of

candidates for appointments; the selection of persons to be recommended to the Prime Minister for appointment; the making of recommendations to the Prime Minister; the withdrawal of recommendations when a person meets the disqualification condition; and the appointment of a chief executive.

136. *Paragraph 10* allows the Commission to decide the conduct of its own procedures including that of its committees and sub-committees (sub-paragraph (1)). The Commission's proceedings are not affected by a vacancy among Commissioners or by a defect in the appointment of any of the Commissioners (sub-paragraph (2)).

137. The Commission has a duty to appoint a chief executive and may decide to appoint other members of staff under *paragraphs 11(1) and (2)*. All staff are to be appointed on terms and conditions determined by the Commission and broadly based on terms and conditions applicable to civil servants (sub-paragraph (3)).

138. By virtue of *paragraph 12(1)* the Joint Committee has the power to appoint a person as a temporary chief executive until a permanent one is appointed by the Commission under paragraph 11(1). A temporary chief executive may carry out functions on behalf of the Commission including incurring expenditure and appointing staff. The temporary chief executive power continues until the Commission is fully constituted or until the Commission decides otherwise (sub-paragraph (2)). The Joint Committee has the power to provide directions regarding the exercise of the temporary chief executive's powers (sub-paragraph (3)). Sub-paragraph (4) allows the chair of the Joint Committee to appoint additional persons to the Commission's staff; however, the chair's powers are only exercisable up until the constitution of the Commission (sub-paragraph (5)).

139. *Paragraph 13(1)* provides that employment by the Commission comes within the kind of employments dealt with in section 1 of the Superannuation Act 1972. The Act deals with pension and other benefits affecting persons in specific employments. There is also a requirement for the Commission to pay a specific amount to the Minister for the Civil Service in relation to money provided by Parliament under the 1972 Act (sub-paragraph (2)). Sub-paragraph (3) amends Schedule 1 to the Superannuation Act 1972.

140. *Paragraph 14* explains that the Commission, committees, sub-committees, Commissioners and the chief executive may all delegate functions, excluding those under paragraph 9(5), to Commission staff (sub-paragraphs (1) to (4)).

141. *Paragraph 15* applies section 1(2) of the Superannuation Act 1972 whereby functions in relation to a civil service pension scheme may be delegated from the Minister for the Civil Service to another officer of the Crown. Sub-paragraph (1) makes sure that the definition of "an officer of the Crown" includes a reference to the Commission's chief executive. Sub-paragraphs (2) and (4) allow the delegation of administrative functions granted to the chief executive to other members of staff as authorised by the chief executive. Sub-paragraph (3) provides the definition of "administration function" by explaining that it means overseeing schemes made under section 1 of the Superannuation Act 1972. Under sub-paragraph (5) any authorisation to carry out functions, from the chief executive to another staff, is to be treated as given by virtue of an order under section 69 of the Deregulation and Contracting Out

Act 1994. The authorisation may be revoked at any time by the Commission or by the chief executive.

142. *Paragraph 16* explains that the Commission, the Commissioners and its staff are not to be regarded as servants or agents of the Crown or as enjoying any Crown status, immunity or privilege (sub-paragraph (1)). Sub-paragraph (2) specifies that the Commission's property is not to be regarded as Crown's property.

143. *Paragraph 17(1)* provides that the Commission's expenditure is to be funded by Parliament. Sub-paragraph (2) states that the Commission must submit to the Joint Committee an estimate of expenditure for each financial year (other than its first year). The Joint Committee is required to review the estimate, to consult with the Treasury and take into consideration any advice given, and may modify the estimate (sub-paragraphs (3) to (5)). When satisfied with the estimate, the chair of the Joint Committee must lay it before the House of Commons. Where the Joint Committee decides to disregard the Treasury's advice or to make changes to the estimate this must be put in writing and laid before the House of Commons (sub-paragraphs (4), (6) and (7)).

144. *Paragraph 18* puts the Commission under a duty to keep accurate accounts for each financial year in accordance with Treasury's instructions (sub-paragraph (1) and (2)). The Treasury may also give the Commission specific directions as to the content of the accounting records (sub-paragraph (3)). Sub-paragraph (4) requires the chief executive to be the accounting officer for the Commission.

145. *Paragraph 19* requires the Commission to submit its accounts to the Comptroller and Auditor General and to the Joint Committee as soon as possible after the end of each financial year. The Comptroller and Auditor General is under a duty to control and certify the accounts. It must then lay the accounts together with a report before each House of Parliament (sub-paragraph (2)).

146. *Paragraph 20* requires the Commission to prepare a report on its performance as soon as reasonably possible after end of the financial year. The chair of the Joint Committee must lay the report before each House of Parliament (sub-paragraph (2)). The report must then be published (sub-paragraph (3)).

147. *Paragraph 21* refers to documents which are claimed to be executed under the Commission's seal or signed on its behalf. These may be received in evidence and will be regarded to be authentic unless the contrary is proved. This paragraph does not extend to Scotland.

148. *Paragraph 22* amends Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 and Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975. The paragraph adds the House of Lords Appointments Commission to the list of bodies of which all members are disqualified from membership of the House of Commons or membership of the Northern Ireland Assembly.

149. *Paragraph 23* clarifies the reference in Part 6 of Schedule 1 to the Freedom of Information Act 2000 to the House of Lords Appointments Commission in the list of bodies which are public authorities.

150. *Paragraph 24* amends Schedule 1 to the Public Records Act 1958 so as to make the records of the House of Lords Appointments Commission public records.

151. *Paragraph 25* provides the definition of “financial year”. It begins with the establishment of the Commission and ends the following 31 March in the first year. Thereafter it lasts for each 12 months to 31 March.

### **Clause 17 and Schedule 5: The Joint Committee on the House of Lords Appointments Commission**

152. *Subsection (1)* establishes the Joint Committee on the House of Lords Appointments Commission.

153. *Subsection (2)* introduces Schedule 5 which makes provision for the Joint Committee.

#### **Schedule 5**

154. *Paragraph 1* sets out the composition of the Joint Committee by stating who is to be part of it and the appointment process. Sub-paragraph (1) specifies that the Joint Committee is to consist of a Minister of the Crown from the House of Commons with responsibility in relation to constitutional matters, four members of the House of Commons and House of Lords respectively, who are not Ministers of the Crown; the persons who chair the relevant constitutional committee in each of the House of Lords and the House of Commons. Sub-paragraph (2) explains that the Prime Minister has the duty to appoint the Minister of the Crown to the position. The House of Lords and the House of Commons have the duty to appoint the four members of the House of Lords and of the House of Commons to the Joint Committee. Once the Joint Committee is set up, members must then choose a chair (sub-paragraph (3)). Sub-paragraph (4) expressly states that the relevant committees mentioned in sub-paragraph (1) (d) and (e) are to be related to constitutional matters. Issues arising under paragraph 1(4) are to be solved by the Speaker of the relevant House of Parliament (paragraph 1(5)).

155. *Paragraph 2* provides information regarding the Joint Committee members’ term of office. Members of the Joint Committee are required to serve for a term that is equivalent to the length of one Parliament (sub-paragraph (2)) relevant to the one in which the person has been appointed as a member. When a person who has been appointed to the Joint Committee is no longer a member of the House of Lords or a member of the House of Commons that person’s membership of the Joint Committee will also end (sub-paragraphs (3) and (4)). If a member of the Joint Committee who was not a Minister of the Crown becomes a Minister, the person’s membership of the Joint Committee will come to an end (sub-paragraph (5)). A member of the Joint Committee may decide to resign by giving notice to the Joint Committee (sub-paragraph (7)). A member of the Joint Committee’s term of office may end when another person is appointed to the position (sub-paragraph (6)). Joint Committees’ members can be re-appointed (sub-paragraph 8)).

156. *Paragraph 3* deals with the establishment of sub-committees. Committees and sub-committees may decide their own procedures. (Sub-paragraphs (1), (2) and (3)). The validity of proceedings of committees and sub-committees is not affected by vacancies among members or any defect in the appointment of any member (sub-paragraph (4)).

### **Clause 18: Ordinary appointed members**

157. This clause set out the process for appointing members. *Subsection (1)* requires the appointment of twenty persons to the House of Lords (“ordinary appointed members”) as members, following each election to the House of Lords.

158. *Subsections (3) and (4)* place a duty on the Commission to provide the Prime Minister with twenty recommendations within 14 days from the day after the House of Lords election polling day (“relevant period”).

159. As specified in *subsection (5)*, the Prime Minister, who does not have the power to change a recommendation made to him by the Commission, is under a duty to recommend the twenty persons to Her Majesty for appointment by Her (subsection (2)). The Prime Minister must do so as soon as reasonably practicable after the date on which the Commission makes the recommendations to him.

160. *Subsection (6)* states that this clause is subject to clauses 22 which state that the number of appointments to the House of Lords, under subsections (1) and (3) of this clause could be decreased if there have been recent appointments to the House of Lords due to seats becoming vacant during an electoral period. Clause 18 is also subject to clause 25 which deals with the withdrawal of recommendations made by the Commission and Prime Minister.

### **Clause 19: Ordinary appointed member’s term of office**

161. *Subsection (1)* states that an ordinary appointed member’s term of office begins with the day on which the person becomes an appointed member and ends on the day of dissolution of the Parliament of the third electoral period.

162. *Subsection (2)* defines “third electoral period” as the period following two electoral periods beginning with the day after the polling day in connection with the House of Lords election relevant to the member’s appointment.

163. Subsection (3) entitles the appointed member to receive a writ of summons. This calls the member to the House of Lords and gives them the right to sit in the House of Lords during their term of office. A new writ of summons will be issued for each Parliament during their term. However, subsection (5) states that if an appointed member’s membership comes to an end this will also terminate the validity of any writ of summons issued.

164. *Subsection (4)* states that an appointed member’s term of office and the member’s entitlement to receive a writ of summons is subject to: the provisions contained in the Bill and provisions contained in any other legislation which relates to House of Lords membership or to the entitlement to receive a writ of summons and any power of the House of Lords to suspend the appointed member.

## **Clause 20: Replacement appointed members**

165. *Subsection (1)* refers to a person who has been appointed as a member of the House of Lords under clause 18 or clause 20 but whose appointment either is void due to clause 39(2) or whose membership ceases before the end of their expected term. Clause 39(2) states that the appointment of a person who is disqualified from being an appointed member renders the appointment void. Disqualification, under clause 36(1), may occur for several reasons including: the member's age; nationality; the member's holding of a disqualifying office under section 1 of the House of Commons Disqualification Act 1975 or a disqualifying office for an appointed member; an insolvency order made against the member; having committed a serious offence and a previous appointment to the House of Lords.

166. *Subsection (2)* requires the appointment of a new person (a “replacement appointed member”) to fill a vacant seat when the events mentioned in subsection (1) occur.

167. As in the ordinary appointment process, the Commission, as soon as reasonably practicable, must recommend a person for appointment to the Prime Minister (*subsection (4)*) who will then recommend that person to her Majesty for appointment (*subsections (3) and (5)*). The Prime Minister has no power to modify a recommendation and choose to put forward a different person from the one nominated by the Commission (*subsection (5)*). The Prime Minister must advise Her Majesty as soon as reasonably practicable.

168. *Subsection (6)* explains that if a new person has not been appointed as a member prior to the end of the expected appointed member’s term, there will be no need to appoint a person to be a Replacement Appointed Member for the vacant seat and subsection (2) will no longer be applicable.

169. *Subsection (7)* provides that subsection (8) applies where an Appointed Member’s expected term is the extended period provided for by clause 21(3), and that member’s appointment is known by the Commission to be void or the member ceases to be an appointed member before the end of the polling day for the first House of Lords election that occurs during that period.

170. *Subsection (8)* provides that if no appointment has been made in replacement of the replacement appointed member, mentioned in subsection (7), before the end of that polling day, then subsection (2) no longer applies and a replacement appointed member is no longer to be appointed. In effect this provision ensures that if a replacement appointed membership arises in the final electoral period of a seat, and that membership is either declared void or the membership ceases in the first electoral period of that membership, then no further replacement is necessary. This is because the normal three electoral period term for the ordinary appointed member that originally held that seat expires at the next election. Therefore the seat in such circumstances is to remain vacant, so that it can be filled by a new ordinary appointed member following the next election.

171. *Subsection (9)* draws attention to the definition of expected term of an appointed member in clause 23. That clause explains that the expected term is the period which is equivalent either to the term of office of an ordinary appointed

member (three electoral periods) or to the term of office of a replacement appointed member (which may be the end of the term of the member being replaced or the end of the third electoral period after the polling day for the House of Lords election which follows the last day of the expected term of the membership of the person they are replacing).

172. *Subsection (10)* specifies that clause 20 is subject to clause 25 which deals with the withdrawal of recommendations by the Commission or the Prime Minister.

### **Clause 21 – Replacement appointment member’s term of office**

173. *Subsection (2)* states that a replacement appointed member’s term of office begins with the day on which the person becomes an appointed member and generally ends with the last day of the expected term of office of the person he or she is replacing. This is subject to *subsection (3)* which provides the exception to the general rule where a person is appointed to replace an appointed member who vacated their seat in the last period of their term (and who has not previously been an elected or an appointed member, clause 21(4)). In such circumstances the replacement appointed member would serve a term of office which includes the last electoral period of the replaced appointed member and three additional electoral periods. Their term of office will end on dissolution of the last Parliament of the third electoral period.

174. *Subsection (5)* defines “third electoral period” as the third period after the House of Lords election polling day which follows the last day on which the previous appointed member’s term of office would have normally come to an end.

175. *Subsection (6)* entitles the newly appointed member to receive a writ of summons. The document calls the member to the House of Lords and gives them the right to sit in the House of Lords during their term of office.. *Subsection (8)* states that if the newly appointed member’s membership comes to an end any writ of summons issued will no longer apply.

176. *Subsection (7)* states that a newly appointed member’s term of office and the member’s entitlement to receive a writ of summons is subject to: the provisions contained in the Bill; the provisions contained in any other legislation which relates to House of Lords membership or to the entitlement to receive a writ of summons and any power of the House of Lords to suspend the appointed member.

177. *Subsection (9)* draws attention to the definition of expected term of an appointed member under clause 23.

### **Clause 22: Modification of numbers of ordinary appointed members**

178. *Subsection (3)* defines a recent replacement appointed member, on the day after the polling day for a House of Lords general election, as a person who is serving an extended term of office as explained in clause 21(3). Clause 21 refers to a person who is appointed in replacement of a member who vacated their seat in the last electoral period of their term. The newly appointed member would serve a term of office which includes the last electoral period of the replaced member and three additional electoral periods (“extended term”). This term of office will end on dissolution of the last Parliament of the third electoral period. The modification in

clause 22 would only apply if the House of Lords election is the first election following the new member's appointment.

179. *Subsection (1)* applies to a House of Lords election only if there are recently appointed members on the day after the polling day for the House of Lords election.

180. If subsection (1) applies, *subsection (2)* requires the number of recommendations and appointments made under clauses 18(1) and (3) to be reduced by the number of the recently appointed members.

### **Clause 23 Appointed member's "expected term"**

181. *Subsection (1)* defines the expected term of an ordinary appointed member as the period set out in clause 19(1) and that of a replacement appointed members as the period set out in clause 21(2) or (3) as the case may be.

182. *Subsection (2)* states that if an appointment is void because the person is disqualified under clause 39(2), the expected term of office is to be considered as if the appointment was never declared void.

### **Clause 24: Criteria and procedure for selection**

183. *Subsection (1)* requires the Commission to conduct procedures for selection of future appointees on the basis of merit, in a fair and open manner.

184. *Subsection (2)* places a duty on the Commission to take into account the principle that it is expected for appointed members to bring a non-party political perspective to the work carried out by the House of Lords. This does not necessarily mean that a person with a previous or current connection to a political party will not be considered for appointment.

185. *Subsection (3)* states that the Commission must not recommend a person for appointment unless the person has declared, at a time required by the Commission (*subsection (4)*) that he or she is aware of the disqualification provisions for appointed members in the Bill and to the best of the person's knowledge, that he or she is not caught by the provisions.

186. *Subsection (5)* requires the Commission to put in place a scheme, subject to subsections (1) to (3), laying out the criteria and procedures for selection of persons to recommend for appointment.

187. *Subsection (6)* requires the Commission to review and revise the scheme regularly.

188. *Subsection (7)* requires the Commission to publish the review and any revision of the scheme.

### **Clause 25: Withdrawal of recommendations**

189. *Subsection (1)* provides that the clause applies to a recommendation for appointment made by the Commission and by the Prime Minister under clause 18 or 20.

190. *Subsection (2)* requires the person who made the recommendation to withdraw it before it is acted upon, if it appears to the person who made the recommendation that the person recommended is disqualified under clause 38 (subsection 3). The Commission must provide the Prime Minister with a new recommendation as soon as reasonably practicable.

191. *Subsections (4) and (5)* provide that a recommendation of the Commission is acted upon when the Prime Minister recommends the person to Her Majesty, and that a recommendation of the Prime Minister is acted upon when the person is appointed by Her Majesty.

192. Under *subsection (6)* the new recommendation is to be treated as made under clause 18 or 20.

193. *Subsection (7)* provides that the time limit of 14 days set under clause 18 does not apply to the new recommendation.

#### **Part 4: Lords Spiritual**

194. By virtue of this part a number of archbishops and bishops of the Church of England will sit in the House of Lords alongside the elected and appointed members, on a supernumerary basis. Five named Lords Spiritual (the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester) and up to seven ordinary Lords Spiritual selected by the Church of England will be entitled to remain in House of Lords at the end of transition (and be replaced if they leave) with full speaking and voting rights. They will continue to be known as Lords Spiritual.

#### **Clause 26: Named Lords Spiritual**

195. *Subsections (1) and (2)* provide that holders of named offices, which for the purposes of the Bill are the Archbishops of Canterbury and of York and the Bishops of London, Durham and Winchester, are to be members of the House of Lords for the whole of the period for which they hold that office.

196. *Subsection (3)* states that a person holding one of the named offices is entitled to receive a writ of summons to attend each Parliament for as long as he is a named Lord Spiritual.

197. *Subsection (4)* states that the above subsections are subject to any provisions elsewhere in the Act, or other legislation, relating to the named person's membership of the House of Lords or entitlement to receive writs of summons. It confirms that the subsections are also subject to any inherent power of the House of Lords to suspend that named person.

198. *Subsection (5)* provides that if the person ceases to hold one of the named offices then a writ of summons previously issued to them in that capacity has no further effect.

#### **Clause 27: Ordinary Lords Spiritual**

199. *Subsections (1) to (3)* allow, but do not require, the Church of England for each electoral period to select diocesan bishops, to serve in the House of Lords as ordinary Lords Spiritual. For the first transitional period, the Church may select up to

16 bishops, for the second transitional period up to 11 and for each subsequent period, up to 7. These bishops must be selected from amongst those who do not hold a named office.

200. *Subsections (4) to (6)* provide for the Church of England to make the selections in whichever way it considers appropriate. The selection must be made prior to the beginning of each transitional period, but in subsequent electoral periods it may be made either prior to the beginning of, or during, the electoral period in question.

201. *Subsection (7) to (8)* provide that the Secretary General must follow a specific procedure to notify the Clerk of the Parliaments in relation to any selections under this clause before the beginning of the transitional periods and each subsequent electoral period. The Clerk of Parliaments must be notified as soon as reasonably practicable.

202. *Subsection (9)* specifies that “Secretary General” means the Secretary General of the General Synod of the Church of England.

203. *Subsection (10)* explains that clause 28 makes further provision for the selection of ordinary Lords Spiritual through the transitional periods.

### **Clause 28: Ordinary Lords Spiritual for first and second transitional periods**

204. *Subsections (1) and (2)* provide that a person may only be selected to sit in the House of Lords as an ordinary Lord Spiritual in the first transitional period if they were a Church of England bishop entitled to receive writs of summons to attend the House of Lords immediately before the dissolution of the last Parliament before the first House of Lords election.

205. *Subsection (3)* provides that, in determining entitlement to receive writs of summons, an order under section 427 of the Insolvency Act 1986 is to be ignored. An order under section 427 of the 1986 Act disqualifies a person subject to insolvency in Northern Ireland or Scotland (in circumstances where there is not necessarily any element of culpability), from sitting and voting in the House of Lords.

206. *Subsection (4)* provides that a person may only be selected as an ordinary Lord Spiritual for the second transitional period if they were such a member immediately before the dissolution of the last Parliament of the first transitional period.

207. *Subsection (5)* provides that if fewer than seven ordinary Lords Spiritual are eligible to be selected to sit in the second transitional period, then the Church of England may select from amongst other bishops who do not hold a named office to bring the number up to seven.

### **Clause 29: Ordinary Lord Spiritual’s term of office**

208. *Subsections (1) to (4)* provide that those selected to be ordinary Lords Spiritual are to be such members from the beginning of an electoral period until dissolution of the last Parliament in that electoral period, if selected prior to the beginning of the electoral period. Those selected to be ordinary Lords Spiritual during an electoral period are to be such members from the day on which the Clerk of the Parliaments receives the notice referred to in clause 27(8) until dissolution of the last

Parliament in that electoral period. They all are to be entitled to receive a writ of summons for each Parliament during that period.

209. *Subsection (5)* states that the above subsections are subject to any provisions elsewhere in the Act, or other legislation, relating to the ordinary Lord Spiritual's membership of the House of Lords or entitlement to receive writs of summons. It confirms that the subsections are also subject to any inherent power of the House of Lords to suspend the ordinary Lord Spiritual.

210. *Subsection (6)* provides that if the person ceases to be an ordinary Lord Spiritual, then any writ of summons issued to them in that capacity has no further effect.

### **Clause 30: Ordinary Lords Spiritual: vacancies**

211. *Subsections (1) and (2)* provide that if the selection of an ordinary Lord Spiritual is void because of clause 41(4) (as to which see the notes to that clause) or an ordinary Lord Spiritual ceases to be such a member before the end of the expected term, then another person may be selected as an ordinary Lord Spiritual in their place.

212. *Subsection (3)* stipulates that the person selected must be a bishop of the Church of England who does not hold a named office.

213. *Subsections (4) and (5)* provide for the Church of England to make the selection in whichever way it considers appropriate, and for a notification procedure to the Clerk of the Parliaments.

214. *Subsection (6)* provides that a selection may not take place after the term of the person in whose place it is made, as defined by *subsection (8)*, would otherwise have ended.

215. *Subsection (7)* stipulates that, during the transitional periods, the procedures on filling vacancies only apply if there would otherwise be fewer than seven ordinary Lords Spiritual.

### **Clause 31: Selection under section 30: member's term of office**

216. *Subsection (1)* provides that the clause applies to a person who is selected as an ordinary Lord Spiritual to fill a vacancy under clause 30.

217. *Subsection (2)* stipulates that the term of the ordinary Lord Spiritual is to begin on the day the Clerk of the Parliaments receives notice of the selection. It is to end with the day on which the term of the person in whose place they are selected would otherwise have ended.

218. *Subsection (3)* states that the ordinary Lord Spiritual is entitled to receive a writ of summons to attend each Parliament during their term.

219. *Subsection (4)* states that the above subsections are subject to any provisions elsewhere in the Act, or other legislation, relating to the ordinary Lord Spiritual's membership of the House of Lords or entitlement to receive writs of summons. It confirms that the subsections are also subject to any inherent power of the House of Lords to suspend that person.

220. *Subsection (5)* provides that if the ordinary Lord Spiritual ceases to be such a member before the end of their expected term, any writ of summons previously issued to them in that capacity has no further effect.

### **Clause 32: Ordinary Lord Spiritual’s “expected term”**

221. This clause sets out the expected term for all ordinary Lords Spiritual.

222. *Subsection (1)(a)* provides that if a person is selected as an ordinary Lord Spiritual for an electoral period, their expected term begins at the start of that electoral period, or if later, on the day the Clerk of the Parliaments receives notice of their selection, and ends on dissolution of the last Parliament in the electoral period.

223. *Subsection (1)(b)* provides that if a person is selected as an ordinary Lord Spiritual to fill a vacancy under clause 30, their expected term begins on the day the Clerk of the Parliaments receives notice of their selection and ends on dissolution of the last Parliament in the electoral period.

224. *Subsection (2)* makes provision for the determination of the expected term of a person whose selection is void, for the purpose of determining the term of the person who fills the resulting vacancy. The former term is to be determined as if the selection was not void.

### **Clause 33: Ordinary Lords Spiritual: supplementary provision**

225. *Subsection (1)* provides that an ordinary Lord Spiritual ceases to be such a member if they are appointed to one of the named offices or they cease to hold office as a bishop.

226. *Subsection (2)* provides that an ordinary Lord Spiritual does not cease to be an ordinary Lord Spiritual on becoming the bishop of a different diocese. The provision replicates that in section 5 of the Bishoprics Act 1878, which this Act repeals.

### **Clause 34: Ministerial members**

227. The clause provides for Her Majesty to appoint individuals to the House of Lords to serve as ministerial members on the recommendation of the Prime Minister in connection with the appointment of those persons to ministerial offices. By convention, all Ministers sit in either the House of Commons or the House of Lords in order to be accountable to Parliament.

228. *Subsection (3)* provides for the term of office of the ministerial members, which ends once the person ceases to be a minister.

229. *Subsection (4)* states that the ministerial member is entitled to receive a writ of summons to attend the House of Lords in relation to each Parliament during their term.

230. *Subsection (5)* states that the ministerial member’s term of office is, however, subject to any provisions in this Act, or other legislation, relating to the ministerial member’s membership of the House of Lords or entitlement to receive writs of summons. It confirms that the subsections are also subject to any inherent power to suspend ministerial members.

231. *Subsection (6)* provides that if the ministerial member ceases to be such a member, then any writ of summons issued to them under this section has no further effect.

232. *Subsection (7)* provides an order making power for the Prime Minister to make provision concerning the number and appointment of ministerial members, the conditions of membership, and their remuneration amongst other things. *Subsection (8)* additionally provides that that order making power can also be used to modify this Act or any other enactment.

### **Clause 35 and Schedule 6: Transitional members**

233. This clause introduces Schedule 6 which provides for the numbers and selection of transitional members for the first and second transitional periods.

#### **Schedule 6**

234. *Paragraph 1* introduces Schedule 6 as making provisions on transitional members.

235. *Paragraph 2* specifies the maximum number of transitional members in the first transitional period. It is to be two thirds of the number of peers, rounded up to the nearest whole number, who on the day that the Bill for this Act is presented in the House of Commons, are entitled to receive writs of summons to attend the House of Lords. In determining this entitlement, an order under section 427 of the Insolvency Act 1986 is to be disregarded.

236. *Paragraphs 3(1) to (3)* provide that for a person to be eligible to be a transitional member in the first transitional period they must be a peer entitled to receive a writ of summons immediately before the dissolution of the last Parliament before the first House of Lords election. For the purpose of determining that entitlement, an order under section 427 of the Insolvency Act 1986 is to be disregarded. That section provides that a person is disqualified from sitting and voting in the House of Lords during a period of insolvency under Scottish or Northern Irish law.

237. *Paragraph 3(4)* stipulates that in order to be a transitional member for the first transitional period, the person must be selected before the beginning of that period.

238. *Paragraph 3(5)* requires the selection to be made in accordance with the standing orders of the House of Lords.

239. *Paragraphs 3(6) to (8)* provide that the standing orders may make further provision about eligibility for selection to be a transitional member, including any consequences of an ineligible person being selected and provision for the selection to be void. The standing orders may also provide for a selection process by election or otherwise, and by political parties or any other groups.

240. *Paragraph 3 (9)* provides that any writ of summons issued to a person whose selection is void has no effect, and no other person may be selected to take the person's place.

241. *Paragraph 3(10)* states that these processes may take place even when the House of Lords is adjourned or Parliament is prorogued or dissolved, subject to provisions made in the standing orders.

242. *Paragraph 3(11)* provides that selections may take place in accordance with standing orders in anticipation of these paragraphs coming into force.

243. *Paragraph 4* makes provisions on the selection of transitional members for the second transitional period.

244. *Paragraphs 4(1) to (3)* state that the maximum number of transitional members is to be one third of the number of peers, rounded up to the nearest whole number, who are entitled to receive writs of summons to attend the House of Lords on the day the Bill for this Act is presented in the House of Commons. For the purpose of determining that entitlement, an order under section 427 of the Insolvency Act 1986 is to be disregarded.

245. *Paragraph 5* makes provisions on the selection of transitional members for the second transitional period. *Paragraph 5(1)* provides that a person is eligible for selection only if they were a transitional member in the first transitional period immediately before the dissolution of the last (or only) Parliament of the first transitional period. *Paragraphs 5(2) and (3)* stipulate that the selection must occur before the beginning of that transitional period and in accordance with the standing orders of the House of Lords.

246. *Paragraphs 5(4) to (8)* make identical provisions for the standing orders to make further provisions on selection, to those in paragraphs 3(5) to (10) which deal with selection for the first transitional period.

247. *Paragraphs 6(1) and 6(2)* make provision for the terms of office for transitional members. The term begins with the day after polling day for the relevant House of Lords election and ends on the day of dissolution of the last Parliament of the relevant transitional period. Members may receive writs of summons to attend the House of Lords in relation to each Parliament during the period for which they are transitional members.

248. *Paragraph 6(3)* states that a transitional member's term of office is, however, subject to any provisions in this Act, or other legislation, relating to the transitional members' membership of the House of Lords or entitlement to receive writs of summons. It confirms that the subsections are also subject to any inherent power to suspend transitional members.

249. *Paragraph 6(4)* provides that if a transitional member ceases to be such a member any writ of summons previously issued to them in that capacity no longer has any effect. It also stipulates that the transitional member will not be replaced.

250. *Paragraph 7(1) to (3)* provide that if a person selected to be a transitional member for either the first or second transitional period is also either returned, or appointed in connection with, the House of Lords election which immediately precedes the transitional period, then the selection as a transitional member is void.

Any writ of summons issued to that person as a transitional member has no effect. No other person may serve as a transitional member in that person's place.

251. *Paragraph 7(4)* provides that if a transitional member is appointed as a replacement appointed member to fill a vacancy, then that person ceases to be a transitional member immediately before the day the term as a replacement appointed member begins. There will therefore be no gap in the member's service.

252. *Paragraph 7(5)* makes equivalent provision for a transitional member who is returned as a substitute elected member to fill a vacancy.

253. *Paragraph 8(1)(a)* provides that for both transitional periods the Clerk of the Parliaments will determine any questions arising as to the maximum number of transitional members.

254. *Paragraph 8(1)(b)* provides that the Clerk of the Parliaments will also determine any questions arising as to whether a person has been selected as a transitional member under paragraphs 3 or 5.

255. *Paragraph 8(2)* provides that a certificate confirming the Clerk's decision and signed by the Clerk is conclusive.

### **Clause 36: Disqualification from being an elected member**

256. *Subsection (1)* makes provision barring persons from being elected to the House of Lords where:

- a) the person does not meet a minimum age requirement of 18 on the day they are nominated as a candidate;
- b) the person is disqualified from membership of the House of Lords on grounds of nationality by section 3 of the Act of Settlement 1700 as modified by clause 45 (as to which see the notes to that clause). This mirrors the ground for disqualification from membership of the House of Commons on the basis of nationality;
- c) the person is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975; (judges, civil servants, members of the armed forces, members of police forces, and members of foreign legislatures).
- d) the person holds a disqualifying office for an elected member as described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975 other than that of member of the House of Lords Appointments Commission, but see subsection (4);
- e) the person is subject to an insolvency order (as to which see clause 46);
- f) the person meets the serious offence condition (as to which see clause 47); or
- g) the person has previously been an elected member of the House of Lords, except where that relates to a single return as either a substitute elected member or one-period replacement elected member (*subsection (6)*). An exception to disqualification is also provided in relation to a single period of previous service where clause 48 is engaged. The relevant circumstances

are that, in the first or second electoral period in which a person was previously either an ordinary elected member, or a two-period replacement elected member:

- i. the person was disqualified on grounds of insolvency, but the insolvency order was later annulled,
  - ii. the person was disqualified on grounds of meeting the serious offence condition, but the conviction was later reversed etc.
- h) the person has previously been an appointed member, except where that relates to a single period of service as either an ordinary appointed member or replacement appointed member where clause 48 is engaged (the relevant circumstances for engagement of the clause being the same as for elected members at subsection (1)(g)).
257. *Subsection (2)* provides that a person is disqualified for a particular electoral district if they are disqualified for membership of the House of Commons, in relation to any parliamentary constituency comprised in the relevant electoral district, under section 1 (2) of the House of Commons Disqualification Act 1975
258. *Subsection (3)* defines a “disqualifying office for an elected member”.
259. *Subsection (4)* provides that Her Majesty may by Order in Council modify the application to elected members of the list of disqualifying offices in Part 2 or 3 of Schedule 1 of the House of Commons Disqualification Act 1975, following a resolution of the House of Lords. The provision mirrors section 5 of the 1975 Act, which allows the House of Commons to amend Schedule 1 of that Act. Each House may accordingly have a different list of disqualifying offices from each other.
260. *Subsection (5)* specifies that “office” includes a post or employment for the purposes of this clause.
261. *Subsection (7)* provides that this clause is subject to relief provisions under:

- i) clause 49 which provides that the House of Lords may resolve to disregard disqualification on grounds of age, nationality, or disqualifying office where it considers that the ground no longer applies and it is proper to do so.
- ii) clause 50 which provides that the House of Lords may resolve to disregard disqualification on grounds of meeting the serious offence condition, in relation to overseas sentences and orders.

### **Clause 37: Effect of disqualification under section 36**

262. *Subsections (1) and (2)* provide that if a person is returned as an elected member to the House of Lords who at that time was disqualified from being an elected member, or disqualified specifically in relation to the particular electoral district for which they were elected, the return is void and any writ of summons issued has no effect.

263. *Subsection (3)* provides that where a return is void under subsections (1) and (2), a person’s seat is vacant.

264. *Subsection (4)* provides that an elected member ceases to be a member if they become disqualified from being such a member, or if they become disqualified specifically in relation to the electoral district for which they were returned.

265. *Subsection (5)* states that the whole of this clause is subject to the relief provisions at clauses 49 and 50.

### **Clause 38: Disqualification from being an appointed member**

266. *Subsection (1)* makes provision barring a person from being an appointed member of the House of Lords where:

- a) the person does not meet a minimum age requirement of 18 on the day they become an appointed member;
- b) the person is disqualified from membership of the House of Lords on grounds of nationality by section 3 of the Act of Settlement 1700 as modified by clause 45 (as to which see the notes to that clause). This mirrors the ground for disqualification from membership of the House of Commons on the basis of nationality;
- c) the person is disqualified from being a member of the House of Commons under paragraphs (a) to (e) of section 1(1) of the House of Commons Disqualification Act 1975 (judges, civil servants, members of the armed forces, members of police forces, and members of foreign legislatures);
- d) the person holds a disqualifying office for an appointed member as described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975 as it applies in relation to elected members unless it is listed in an Order in Council made by Her Majesty as provided for in *subsection (3)*;
- e) the person is subject to an insolvency order (as to which see clause 46);
- f) the person meets the serious offence condition (as to which see clause 47);
- g) the person is presently an elected member;
- h) the person has previously been an elected member of the House of Lords, except where that relates to a single return as either a substitute elected member or one-period replacement elected member (*subsection (5)*). An exception to disqualification is also provided in relation to a single period of previous service where clause 48 is engaged. The relevant circumstances are that, in the first or second electoral period in which a person was previously either an ordinary elected member, or a two-period replacement elected member:
  - i. the person was disqualified on grounds of insolvency, but the insolvency order was later annulled,
  - ii. the person was disqualified on grounds of meeting the serious offence condition, but the conviction was later reversed etc.
- i) the person has previously been an appointed member, except where that relates to a single period of service as either an ordinary appointed member or replacement appointed member where clause 48 is engaged (the relevant

circumstances for engagement of the clause being the same as for elected members at subsection (1)(h)).

267. *Subsection (2)* defines a “disqualifying office for an appointed member” as any of the disqualifying offices for an elected member subject to subsection (3).

268. Specifically, they are those offices described in Part 2 or 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other than member of the House of Lords Appointments Commission), inclusive of any modification to their application to elected members of the House of Lords by Order in Council under clause 36(4), except as provided at subsection (3).

269. *Subsection (3)* provides that an office defined according to subsection (2) may be listed in an Order in Council made by Her Majesty so that it is not a disqualifying office. The list of disqualifying offices for appointed members would therefore be modified by reference to the list of disqualifying offices for elected members of the House of Lords. This would permit a less restrictive list of disqualifying offices to be drawn up for appointed members than for elected members, in order to bring specific experience or expertise to the House of Lords.

270. *Subsection (4)* specifies that “office” includes a post or employment for the purposes of this clause.

271. *Subsection (6)* provides that this clause is subject to relief provisions under clause 49 and clause 50 which are the same as those which apply in relation to disqualification from being an elected member.

### **Clause 39: Effect of disqualification under section 38**

272. *Subsections (1) and (2)* provide that the appointment of a person to the House of Lords is void from the time of appointment if the person is disqualified from being an appointed member.

273. *Subsection (3)* provides that if an appointed member becomes disqualified from being such a member their membership ceases.

274. *Subsection (4)* provides that this clause is subject to the relief provisions at clause 49 and clause 50.

### **Clause 40: Disqualification from being a Lord Spiritual**

275. *Subsection (1)* provides that a person is disqualified from being an Lord Spiritual if they are disqualified from membership of the House of Lords on grounds of nationality by section 3 of the Act of Settlement 1700.

276. *Subsection (2)* provides that a person is disqualified from being an ordinary Lord Spiritual if they are an elected or appointed member.

277. *Subsection (3)* provides that this clause is subject to the relief provisions at clause 48.

#### **Clause 41: Effect of disqualification under section 40**

278. *Subsections (1) and (2)* provide that a person who becomes a holder of one of the named offices will not automatically become an Lord Spiritual if they are disqualified as such. Any writ of summons issued to them has no effect.

279. *Subsections (3) and (4)* provide that the selection of a person to be an ordinary Lord Spiritual is void if the person is disqualified from being such a member either at the time of their selection, or at the time when their membership would be due to commence. Any writ of summons issued to them has no effect.

280. *Subsection (5)* provides that if a Lord Spiritual becomes disqualified from being such a member, their membership ceases.

281. *Subsection (6)* provides that this clause is subject to the relief provisions at clause 49.

#### **Clause 42: Disqualification from being a transitional member**

282. *Subsection (1)* makes provision barring persons from being a transitional member of the House of Lords where:

- a) the person is disqualified from membership of the House of Lords on grounds of nationality by section 3 of the Act of Settlement 1700. This mirrors the current ground for disqualification from membership of the House of Lords on the basis of nationality),
- b) the person is subject to an insolvency order (as to which see clause 46), or
- c) the person meets the serious offence condition (as to which see clause 47).

283. *Subsection (2)* provides that the clause is subject to the relief provisions at clauses 49 and 50, which are the same as those which apply in relation to disqualification from being an elected or appointed member.

#### **Clause 43: Effect of disqualification under section 42**

284. *Subsections (1) to (3)* provide that the selection of a person to be a transitional member of the House of Lords is void if the person is disqualified from being such a member either at the time of their selection, or at the time when their membership would be due to commence. Any writ of summons issued to that person has no effect and no other person may be selected in place of that person.

285. *Subsection (4)* provides that if a transitional member becomes disqualified from being such a member, their membership will cease.

286. *Subsection (5)* provides that the clause is subject to the relief provisions at clauses 49 and 50.

#### **Clause 44: Holders of certain judicial offices disqualified from sitting or voting**

287. *Subsection (1)* provides that transitional members who are also holders of certain judicial offices are disqualified from sitting or voting in the House of Lords or any of its committees.

288. *Subsection (2)* defines disqualifying judicial offices as those specified in Part 1 of Schedule 1 to the House of Commons Disqualification Act 1975 and also Part 1 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

289. The Justices of the Supreme Court to whom Part 1 of Schedule 1 of the House of Commons Disqualification Act 1975 refers, were previously Law Lords in the House of Lords. The Constitutional Reform Act 2005 made them Justices of the Supreme Court and removed their right to sit and vote in the House of Lords (though not their membership of that House) so long as they were active judges. The 2005 Act provides that the disqualification is lifted upon their retirement from the Supreme Court.

290. *Subsection (3)* specifies that any transitional member subject to these disqualifications may still receive writs of summons, which are nevertheless subject to the disqualifications set out in this clause.

#### **Clause 45: Modification of Act of Settlement**

291. *Subsection (1)* provides for the modification by subsections (2) to (5) of the disqualification provision at section 3 of the Act of Settlement 1700 in relation to elected and appointed members of the House of Lords, to mirror the ground for disqualification from membership of the House of Commons on the basis of nationality. The clause mirrors section 18 of the Electoral Administration Act 2006 regarding the House of Commons.

292. *Subsection (2)* ensures that the disqualification in the Act of Settlement does not apply to qualifying Commonwealth citizens as defined by *subsections (3) and (4)*, or citizens of the Republic of Ireland.

293. *Subsection (5)* disapplies the entry in Schedule 7 of the British Nationality Act 1981 concerning the Act of Settlement.

#### **Clause 46: Meaning of “insolvency order” etc**

294. *Subsections (1) to (3)* define an insolvency order for the purpose of the insolvency disqualification condition at clauses 35, 37 and 41. This disqualification condition applies where a person is subject to a bankruptcy restrictions order or undertaking (but not an interim order) in England and Wales, Scotland or Northern Ireland, or a debt relief restrictions order or undertaking (but not an interim order) in England and Wales. A person is not disqualified merely because they are bankrupt: an insolvency order may only be made where there has been additional behaviour by the individual such as fraud, or a neglect of business affairs which may have increased the bankruptcy or failure to cooperate with the official receiver.

295. *Subsections (4) and (5)* provide for a notification procedure to the Speaker of the House of Lords in the event of an insolvency order being made by a court or sheriff, or accepted by a relevant authority, in respect of a member of the House of Lords.

296. *Subsection (6)* defines “relevant authority” for the purpose of the clause.

#### **Clause 47: Serious offence condition**

297. *Subsections (1) and (2)* state the grounds for meeting the serious offence disqualification condition at clauses 36, 38 and 42. The grounds are that the person has been convicted of an offence, has been sentenced to imprisonment or detained for the offence for more than a year (or indefinitely), and is imprisoned or detained

pursuant to that sentence (or should be, but is unlawfully at large). This is similar to the provision for the House of Commons in section 1 of the Representation of the People Act 1981.

298. *Subsection (3)* provides that the condition is met regardless of whether the offence or the subsequent conviction, sentencing or imprisonment occurred in the United Kingdom or elsewhere.

299. *Subsection (4)* provides that the requirements of the condition are met even if under another country's law the act punished is not described as an offence.

300. *Subsection (5)* provides that the time at which the offence or conviction took place does not affect whether the condition is met.

#### **Clause 48: Exception to disqualification under sections 36 and 38**

301. The clause creates an exception to disqualification under clause 36(1)(g) and (h) and clause 38(1)(h) and (i). *Subsection (1)* states that the clause applies where an qualifying elected member or qualifying appointed member, as defined at *subsections (4) and (5)*, ceased membership of the House of Lords as a result of disqualification in the "initial period", as defined by *subsection (6)*, on grounds of insolvency or meeting the serious offence condition, but the insolvency order was subsequently annulled, or the conviction reversed or reduced etc. (see subsection (9)).

302. *Subsections (2) and (3)* provide that the person is not disqualified from being an elected member as a result of one subsequent return. This means the person could serve a second term in the House of Lords as an ordinary elected member, as a one-period or two-period replacement elected member (as provided at clause 13 ), or as a substitute elected member (as provided at clause 11). Additionally, the person is not disqualified from being an appointed member as a result of one subsequent appointment. They could therefore serve a second term as an ordinary appointed member, or as a replacement appointed member (as provided at clause 20).

303. *Subsection (6)(a)* defines the "initial period" as the first or second electoral period after the House of Lords election at which a qualifying ordinary elected member was returned.

304. *Subsection (6)(b)* defines the "initial" period for ordinary appointed members as the first electoral period in which they become a qualifying appointed member and the following electoral period.

305. *Subsections (7) and (8)* set out the circumstances in which different types of insolvency order are annulled.

306. *Subsection (8)* details the relevant legislation applicable to annulment of insolvency orders under subsection (7)(b).

307. *Subsection (9)* sets out the circumstances in which a conviction is reversed . These circumstances are that the conviction is quashed, or the sentence or order reduced so that the individual is no longer detained indefinitely or for more than a year.

**Clause 49: Relief from disqualification: age, nationality and disqualifying office**

308. *Subsection (1)* provides that the clause applies to all types of member of the House of Lords: elected (generally and for a particular district), appointed, transitional and Lords Spiritual, with regards to listed grounds for disqualification at subsection (6).

309. *Subsections (2) to (4)* provide that the House of Lords may by resolution disregard any disqualification on listed grounds, providing the grounds for the disqualification no longer apply to a person and it is appropriate to do so, for example a person gives up a disqualifying office. The effect is that the disqualification is treated as having never occurred (*subsection (5)*).

310. *Subsection (6)* sets out the listed grounds in respect of each type of member.

311. *Subsection (7)* refers to “the age listed ground” within clause 36(1) (a) or clause 38(1) (a).

312. *Subsections (8)* provides that proceedings under an election petition are not affected by this clause.

313. *Subsection (9)* explains the meaning of “election petition” by a reference to Part 3 of the Representation of the People Act 1983 and to orders similar to the petitions within the 1983 Act.

**Clause 50: Relief from disqualification: serious offence condition**

314. This clause provides that the House of Lords may resolve to disregard any disqualification of an elected, appointed or transitional member on grounds of meeting the serious offence condition where the sentence or order was made outside of the United Kingdom. The conditions under which it may do so, and the effects of the resolution, are the same as for relief from disqualification on listed grounds at clause 49.

315. The clause would allow the House of Lords, for example, to disregard disqualification for offences which may not be punishable at all under UK law.

**Clause 51: Jurisdiction of Privy Council as to disqualification**

316. *Subsections (1) to (4)* provide that a person may apply to the Judicial Committee of the Privy Council for a declaration that a person who is apparently a member of the House of Lords is in fact disqualified on one or more listed grounds. This clause applies to all types of membership; elected, appointed, transitional and Lords Spiritual, whether the conditions for the disqualification are currently met, or are no longer met but were at the time the person became an apparent member or subsequently. Similar provisions, set out in section 7 of the House of Commons Disqualification Act 1975, apply to members of the House of Commons.

317. *Subsections (5) to (7)* make provisions as to the rules under which an application to the Judicial Committee may be made, including the requirement for an applicant to provide security for the costs of proceedings as directed by the Judicial Committee.

318. *Subsection (8)* specifies that the security must not be over £5,000 or as specified by the relevant Minister by order.

319. *Subsections (9) and (10)* provide that if a disqualification on a listed ground (as defined in clause 48) is the subject of proceedings concerning an election petition (as defined in clause 49) or has already been disregarded by the House of Lords as a result of a resolution under clause 49, no declaration may be made.

**Clause 52: Power to direct an appropriate court to try issues of fact**

320. *Subsections (1) to (4)* provide for the Judicial Committee of the Privy Council to establish facts relating to applications under clause 51 by directing issues to appropriate courts.

321. In the case of a purported elected member, the appropriate court in the United Kingdom will be determined by the location of the electoral district. In the case of a purported appointed, transitional member or a Lord Spiritual, the appropriate court will be any of those in the United Kingdom to which issues relating to applications concerning purported elected members may be directed, but without restriction as to the geographical location of the court.

322. *Subsection (5)* provides that the decision of the appropriate court is final.

323. The provisions mirror those which apply to the House of Commons in section 7 of the House of Commons Disqualification Act 1975.

**Clause 53: Members of the House of Lords disqualified from being MPs**

324. The clause provides that the provision in the House of Commons Disqualification Act 1975 which disqualified Lords Spiritual from membership of the House of Commons is substituted with a provision disqualifying all members of the House of Lords. This provision therefore ensures that a member of the House of Lords cannot also be an MP.

**Clause 54: Bar on standing for election to both Houses at the same time**

325. This clause provides that a person may not stand for election to the House of Lords to be elected to an electoral district and for election as a candidate for membership of the House of Commons.

326. *Subsection (2)* specifies that a relevant parliamentary general election referred to in subsection (1) is the one the day of the poll for which coincides with the day of the poll for the election for the House of Lords.

327. *Subsection (3) to (5)* amends section 65A (1A) and paragraph 8(3) of Schedule 1 of the Representation of the People Act 1983.

328. This clause makes provision for amendment of the Representation of the People Act 1983 so that a person who makes a false statement on the nomination form for an election to the House of Commons, in order to stand at that election and a House of Lords election, the polling day for which falls on the same day, is guilty of corrupt practice.

**Clause 55: Restriction on former members being elected as MPs**

329. This clause provides that former members of the House of Lords (except Lords Spiritual) are disqualified from being elected to the House of Commons for a period of 4 years and 1 month, from the day they cease to be a member.

330. The effect of the provision is that a person who completes a full term in the House of Lords will be disqualified for an interval which ends just before the earliest date on which, under the Fixed Term Parliaments Bill, it would be possible for a scheduled election to fall after the general election which follows the person's last day of membership of the House of Lords.

331. A person who ceases membership of the House of Lords early will be disqualified for a period of 4 years and 1 month from the day they cease membership.

332. If a person has completed two periods of membership in the House of Lords, for example as a result of an exception from disqualification on grounds of having previously been an elected or appointed member under clause 48, or as a result of previously filling a vacancy under clause 11, the period of disqualification would apply respectively in relation to both periods of membership.

### **Clause 56: Expulsion and suspension**

333. *Subsection (1)* provides powers for the House of Lords to expel or suspend any member (except Lords Spiritual see clause 56(8)) by resolution according to standing orders which it makes. These provisions mirror powers available to the House of Commons under its standing orders.

334. The House of Lords at present has a power to suspend a member temporarily, but only for the remainder of a Parliament within which the power is exercised. The clause provides an enhanced power of suspension.

335. *Subsections (2) and (3)* provide that expulsion results in permanent loss of membership whilst suspension does not result in loss of membership, but removes entitlement to receive writs of summons and causes any writ of summons already issued to have no effect. Accordingly a suspended member will not be able to sit or vote in the House of Lords or any Parliamentary committee for the period of the suspension.

336. *Subsections (4) to (7)* provides that a suspension or expulsion resolution must set out when the matters giving rise to the resolution occurred, which cannot be before the person first commenced membership of the House of Lords or the beginning of the first transitional period, whichever is the later.

337. If for example a member was serving a second term as a result of clause 48 (exception to disqualification on grounds of insolvency or meeting the serious offence condition) this would mean their conduct before they commenced the second term of membership could potentially be the subject of a resolution.

### **Clause 57: Resignation**

338. This clause provides that a member of the House of Lords may resign at any time. They may do so on any grounds. It allows ordinary Lords Spiritual, but not named Lords Spiritual, to resign from the House of Lords without relinquishing their see in the Church of England. The resignation must be made in writing to the Clerk of Parliaments and witnessed by two persons. The member ceases to be a member when the Clerk of the Parliaments signs a certificate of receipt of the notice of resignation.

### **Clause 58: Proceedings**

339. This clause provides that proceedings of the House of Lords should not be questioned due to a vacancy, or the participation of someone who should not have taken part by virtue of, for example, meeting grounds for disqualification.

### **Clause 59 and Schedule 7: Salaries and allowances**

340. *Subsection (1)* inserts new sections 7A, 7B, 7C, 7D, 7E and 7F into the Parliamentary Standards Act 2009 “PSA 2009”. The new sections grant to the IPSA the power to set salaries and allowances for members of the House of Lords. The new sections provide the IPSA with the authority to deal with claims under the scheme, to review a determination and to provide members of the House of Lords with guidance on taxation and on making claims under the House of Lords allowances scheme. The IPSA has similar responsibilities in relation to members of the House of Commons.

#### **New Section 7A Salaries of members of the House of Lords**

341. New section 7A(1) provides for salaries to be paid to members of the House of Lords. The salaries are to be paid by the IPSA monthly in arrears (new sections 7A(2) and (3)). New section 7A(4) provides that the salaries will be determined by the IPSA in accordance with the provisions of new section 7B regarding determination of salaries.

342. New section 7A(5) sets out the definition of “Relevant Parliament” for the purpose of new section 7A(1) and therefore the period for which members of the House of Lords are to receive a salary. By virtue of this section a salary is payable during the period of each Parliament which meets during the period for which the member is a member of the Senate and in which the member subscribes to the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).

343. New section 7A(6) sets out the period for which a salary is payable to a member of the House of Lords. This begins the day after the poll for the preceding parliamentary general election and ends with the day of the poll for the parliamentary general election which follows the dissolution of that Parliament.

344. New section 7A(7) provides that a salary must not be paid to a substitute elected member or a replacement appointed member for a period prior to the day on which they become a member. Where the member ceases to be a member prior to the end of the expected term, no salary is payable after the day on which they cease to be a member.

345. New section 7A(8) defines “expected term” for an elected member as in clause 15 of this Bill, for an appointed member as in clause 23 and for a transitional member as in the period mentioned in paragraph 6 of Schedule 6 of this Bill.

346. New section 7A(9) provides that the duty to pay a salary is subject to anything done in the exercise of the disciplinary powers of the House of Lords, so that a salary can be withheld, or deductions made from it as a consequence of the exercise of the disciplinary powers of the House of Lords.

347. New section 7A(10) states that the new section does not apply to Lords Spiritual.

348. New section 7A(11) ensures that definitions for members are the same in new section 7A as in the clauses of the Bill.

#### **New Section 7B Determination of salaries of members of the House of Lords**

349. New section 7B(1) refers to determinations made under section 7A (4) as regards to the amounts of salaries to be paid out by the IPSA.

350. New section 7B(2) allows the IPSA to decide that the salaries of those holding an office or position specified in a resolution of the House of Lords are to be paid at a higher rate than for other members of the House of Lords.

351. New section 7B(3) permits the IPSA to make different provision under new section 7B (2) for different offices or positions. This will allow the amount of the additional salary to be tailored to that specific office or position.

352. New section 7B(4) allows the IPSA to include a formula or mechanism that would allow the automatic adjustment of salaries from time to time without the need for a further determination. A determination may also have retrospective effect, allowing backdating to a date prior to the determination (new section 7B (5)).

353. New section 7B(6) imposes a duty on the IPSA to review salaries of members of the House of Lords in the first year following each House of Lords election and whenever it considers it appropriate. There is also a consequential duty to consult specific bodies and officials, as part of its reviewing process, prior to the review of a determination (new section 7B (7)).

354. New section 7B(8) states that after a review of salaries the IPSA must publish the review and a statement explaining how the result was obtained. However, if after the review IPSA decides not to make a new determination it must explain, in a statement, how the decision was reached (new section 7B (9)).

355. New section 7B(10) permits the IPSA to delegate its review power to the Review Body on Senior Salaries (SSRB). The section also adds that the IPSA may not delegate its power to decide whether to make a determination.

#### **New Section 7C House of Lords allowances scheme**

356. New section 7C(1) grants the IPSA the power to pay allowances in accordance with the House of Lords allowances scheme. The meaning of the scheme is defined under new section 7C (2) as the scheme set up under this new section. All members, including Lords Spiritual are entitled to claim allowances.

357. The IPSA has a duty to set up the allowances scheme, review it and revise it (new section 7B(3)). It must also consult a number of bodies and persons, listed in new section 7B(4) as part of its duty to review and revise. These are the Speaker of the House of Lords, the Committee on Standards in Public Life, the Leader of the House of Lords, any committee of the House of Lords nominated by the Speaker of the House of Lords, members of the House of Lords, the Senior Salaries Review Body, Her Majesty's Revenue and Customs, the Treasury and any other person IPSA considers appropriate.

358. New section 7C(5) states that the scheme or revision must be laid before the House of Lords. The scheme or revision must be published with a statement explaining the reason for adopting that particular scheme or for making that revision (new clause 7C (6)) and the date the scheme comes into effect (new clause 7C (7)).

359. New section 7C(8) sets out particulars of the scheme by stating that it may provide a list of circumstances under which members may be able to reclaim expenses, the conditions that would allow a claim and the maximum amount that may be paid under the claim.

360. New section 7C(9) states that allowances may be paid in connection to a person ceasing to be a member of the House of Lords and in relation to allowances of a former member of the House of Lords.

361. New section 7C(10) explains that the IPSA's duty to honour a claim for allowance to a member is subject to the disciplinary powers of the House of Lords.

362. New section 7C(11) states that the section does not apply in relation to the provision on pensions for members of the House of Lords.

#### **New Section 7D Dealing with claims under the scheme**

363. Under new section 7D(1) the IPSA is prohibited from paying an allowance before having received a claim. The claim must be submitted by the member unless otherwise stated in the scheme (new section 7D (2)).

364. New section 7D(3) provides that the IPSA on receipt of a claim must decide whether to allow the claim and the amount to be paid to the member.

365. The House of Lords allowances scheme may include additional explanation on how claims are to be dealt with, provisions regarding deductions in respect of amounts that should not have been paid to the member and provisions on how the deductions are to be made (new section 7D(4)).

366. New Section 7D(5) refers to amounts that a member has agreed to refund because the payment of the amount from the House of Lords allowances scheme should not have been allowed by the IPSA.

367. Under new section 7D(6) a member may ask the IPSA to pay an amount to which he is entitled to under the scheme to another person.

368. New section 7D(7) requires the IPSA to publish information regarding all the claims made by members and all the payments of allowances made by the IPSA under the section. IPSA can publish the information at any time and in whichever way the IPSA prefers (new section 7D (8)). In order to decide the processes to be followed to publicise the information section 7D (9) imposes on the IPSA the duty to consult specific bodies, namely: the Speaker of the House of Lords; the Leader of the House of Lords; the House of Lords Committee for Privileges and conduct; the Compliance Officer and any other person the IPSA considers relevant.

### **New Section 7E Review of determination under section 7D**

369. New section 7E(1) provides a review mechanism for occasions when IPSA decides to refuse or to pay only part of a claim made by a member (section 7E (1)). The section allows a member of the House of Lords, after having given the IPSA a reasonable amount of time to review the matter, to approach the Compliance Officer and ask for a review of IPSA's decision.

370. New section 7E(2) states that the Compliance Officer has a duty to consider whether the determination made by the IPSA was correct and whether to confirm it or change it to a new determination. In order to confirm the decision, the Compliance Officer must provide the IPSA with a statement explaining their decision (new section 7E (3)).

371. Under new section 7E(4) the IPSA is under a duty to follow the Compliance Officer's decision and make the payments accordingly. However this must only be done when the House of Lords member has exhausted all their appeal rights or, if an appeal is lodged, only after this has been withdrawn or determined. New Section 7E(5) explains the meaning of a "relevant appeal" by saying that it is an appeal, or a further appeal, made against the Compliance Officer's decision logged before the end of the period of 28 days starting with the day on which the member receives notice of the decision.

372. The member has a right to appeal against the decision of the Compliance Officer to the First-tier Tribunal (new section 7E(6)) within 28 days from the date on which the member receives the notice of the decision (new section 7E(7)). The appeal process is conducted through a re-hearing (new section 7E(8)).

373. The Tribunal may decide to dismiss, allow the whole or part of the appeal (new section 7E(9)). In all cases, whether the Tribunal decides to allow or dismiss the appeal, the Tribunal may make any other order it thinks fit (new sections 7E(10) and (11)).

374. The Compliance Officer is under a duty to notify the IPSA about the outcome of the appeal and of any further appeal (new section 7E(12)).

### **New Section 7F Information and guidance for members of the House of Lords**

375. Under new section 7F(1), the IPSA must prepare and publish guidance for House of Lords members on how to make claims under the allowances scheme. The Authority must also review the guidance, revise it when needed and provide further advice to House of Lords members on making claims. The IPSA must provide House of Lords members with information or guidance about taxation issues published by Her Majesty's Revenue and Customs (HMRC) that it considers they should be aware of (new section 7F(2)). If requested the IPSA must provide further guidance to members of the House of Lords on taxation by getting additional information from HMRC.

376. Section 7E(3) explains that "taxation issues" means any issue regarding taxation of salaries and allowances paid to members under new sections 7A and 7C.

377. *Subsection (2)* introduces Schedule 7 which makes further changes to the PSA 2009. The amendments to the 2009 Act will grant IPSA the power to administer salaries and allowances of members of the House of Lords.

### **Schedule 7: Salaries and Allowances**

378. Schedule 7 sets out the amendments required to the PSA 2009 in order to permit the IPSA to administer the salaries and allowances of members of the House of Lords. The Schedule is divided in three parts. Part 1 explains the abbreviations used in the Schedule. Part 2 sets out the amendments required to the PSA 2009. Part 3 deals with transitional provisions.

379. *Paragraph 1* explains that “the PSA 2009” means the Parliamentary Standards Act 2009 and “the IPSA” means the Independent Parliamentary Standards Authority.

380. *Paragraph 2* introduces the amendments to the PSA 2009.

381. *Paragraph 3* excludes section 2 of the PSA 2009 as the Act will now apply the House of Lords.

382. *Paragraph 4* makes changes to the word “Speaker” in section 3(5) of PSA 2009 and substitutes it with “Speakers”. This is to reflect that the Committee will now include not only the Speaker of the House of Commons but also the Speaker of the House of Lords.

383. *Paragraph 5* makes section 3A(2) of the PSA 2009 applicable to the House of Lords. This means that the IPSA must support efficiently, cost-effectively and transparently not only the members of the House of Commons but also the members of the House of Lords.

384. *Paragraph 6* makes changes to section 5 of the PSA 2009 by making sure that the section only applies to members of the House of Commons. This is to distinguish the MPs’ allowances scheme to the House of Lords allowances scheme.

385. *Paragraph 7* makes changes to section 9 of the PSA 2009 by making the provision applicable not only to investigations carried out against a member of the House of Commons but also against investigations carried out by the Compliance Officer against a member of the House of Lords. The paragraph changes references to the “MPs’ allowances scheme” to the “relevant allowances scheme” making findings of the Compliance Officer applicable to both Houses.

386. *Paragraph 8* amends section 9A of the PSA 2009, dealing with procedures which the Compliance Officer must follow in order to conduct an investigation. IPSA is under a duty to determine the procedures after consultation with specific persons and bodies; sub-paragraph (3) adds House of Lords related persons and bodies to the list under section 9A (6), these are: the Speaker of the House of Lords, the Leader of the House of Lords and the House of Lords Committees.

387. *Paragraph 9* amends section 9B of the PSA 2009. The paragraph adds to the enforcement powers of the Compliance Officer by granting him the authority to

provide the House of Lords Commissioner for Standards with any information connected with an investigation under section 9 or Schedule 4 of the PSA 2009, if the Compliance Officer believes that the information is relevant to the Commissioner's work.

388. *Paragraph 10* amends section 10 of the PSA 2009 which deals with the offence of providing false or misleading information for allowances claims. Sub-paragraphs (2) and (3) make the offence applicable to a member of the House of Lords.

389. *Paragraph 11* amends section 10A of the PSA 2009 which sets out how the IPSA and Compliance Officer will collaborate with specific persons. The paragraph adds references to the House of Lords allowing the inclusion of House of Lords related officers to the list of persons that the IPSA and Compliance Officer must consult under section 10A(1) PSA 2009. Sub-paragraph (4) amends section 10A(4) providing for the powers conferred to the Compliance Officer under section 9 and 9B of PSA 2009 to be applied to members of the House of Lords (or former members) who have already been subject of criminal proceedings or of the disciplinary proceedings of the House of Lords in relation to that conduct.

390. *Paragraph 12* amends section 12 of PSA 2009 which deals with the interpretation of the Act. The paragraph adds the definition of "the House of Lords allowances scheme" and "the Leader of the House of Lords" and to the section. Sub-paragraph (3) explains that references to the House of Lords Committee for Privileges and Conduct are to the committee of the House of Lords dealing with the conduct of members of the House of Lords. It further explains that the House of Lords Commissioner for Standards is the officer of the House of Lords in charge of investigations of House of Lords members' conduct. Sub-paragraph (6) states that any doubts in relation to the House of Lords Committee for Privileges and Conduct and the House of Lords Commissioner for Standards is to be resolved by the Speaker of the House of Lords.

391. *Paragraph 13* amends Schedule 1 to the PSA 2009 which sets out IPSA's governance. References in the Schedule to House of Commons members are extended to members of the House of Lords, references to the House of Commons' allowances scheme is also extended to include references to the House of Lords allowances scheme.

392. *Paragraph 14* amends paragraph 8 of Schedule 2 to the PSA 2009 which makes provision for the appointment of the Compliance Officer, for the person's terms and conditions, resignation, removal from office, remuneration and status. The paragraph provides for the annual report prepared by the Compliance Officer to be sent by the IPSA to the Speaker of the House of Commons and the Speaker of the House of Lords. Both Speakers must then lay the report in each respective House.

393. *Paragraph 15* amends Schedule 3 to the PSA 2009 which deals with the Speaker's Committee for the IPSA; the membership and committee proceedings. The paragraph alters the committee by changing its name and general governance arrangements. It also amends the composition of the Committee to include the Speaker of the House of Lords, the Leader of the House of Lords, the person who

chairs the House of Lords Committee for Privileges and Conduct, three members of the House of Lords who are not Ministers of the Crown and three lay members.

394. *Paragraph 16* amends Schedule 4 to the PSA 2009 which sets out the enforcement powers of the Compliance Officer. Part 1 of the Schedule sets out powers to recover overpaid expenses and Part 2 confers powers to impose a civil penalty on MPs in defined circumstances. The paragraph extends the remit of the Compliance Officer over the House of Lords members, salaries and allowances scheme.

395. Paragraph 17 grants to a relevant Minister the power to set up, by order, a scheme which would transfer to the IPSA all contracts of employment of individuals who have been employed by the House of Lords for the administration of allowances. The scheme will also allow for specific properties, rights and liabilities to pass to the IPSA. Relevant documents related to the House of Lords will also be transferred via the scheme to the Compliance Officer. The Speaker of the House of Lords must consent to the setting up of the scheme (paragraph 17 (2)).

#### **Clause 60: Tax status of members**

396. *Subsections (1) and (2)* provide that members of the House of Lords are deemed to be resident, ordinarily resident and domiciled (“ROD”) in the UK for each tax year in which they are a member, regardless of whether they are a member for the whole or part of the tax year. This means that they will be deemed ROD from the start of the tax year in which they become a member, until the end of the tax year in which they cease membership. The provision operates for the purposes of income tax, capital gains tax and inheritance tax, without regard to the individual’s actual status.

397. The provisions mirror those on tax status in the CRAG Act 2010, which apply to peers in the House of Lords.

398. *Subsections (3) and (4)* define the points at which membership commences and ceases for the purpose of the clause.

399. *Subsection (5)* provides that periods during which holders of certain judicial offices selected under the transitional arrangements are, by virtue of their office disqualified from sitting and voting in the House of Lords, will not count for the purpose of determining whether they were a member in any part of a tax year under subsection (1).

400. *Subsection (8)* provides that the clause does not apply to Lords Spiritual.

#### **Clause 61: Peers not disqualified from voting or from membership**

401. This clause provides that peers will not by virtue of their peerage be disqualified from voting or standing in elections to either House of Parliament. This reverses the position at common law whereby peers were prevented from standing and voting in Parliamentary elections (already changed by the House of Lords Act 1999 in relation to peers who left the House as a result of that Act, and by the CRAG Act 2010 in relation to peers who left the House of Lords under its provisions).

402. The first part of this clause lifts the bar on sitting peers from voting in Parliamentary (and, by extension, in House of Lords elections). Hereditary peers who

are no longer members of the House of Lords may already vote in elections to the Commons under section 1 of the House of Lords Act 1999.

403. This provision reflects the fact that as a result of the Bill, holding a peerage will cease to automatically confer membership of Parliament, and so there is no longer any justification for disqualification.

404. *Subsection (2)* establishes that a person holding a peerage will not be disqualified from becoming an appointed or an elected member of the House of Lords, or a member of the House of Commons, by virtue of their peerage.

405. Related to clause 61 are *paragraphs 5 and 6* of Schedule 9 which enable sitting peers to register as Parliamentary and overseas electors from the point at which those provisions are commenced, but maintain the bar on sitting peers from voting in Parliamentary elections until polling day for the first House of Lords election, when the link between holding a peerage and automatic membership of Parliament is broken. This means peers will be able to complete the necessary registration requirements in order to vote in the first House of Lords election but will continue to be disqualified from voting in Parliamentary elections or by-elections that take place between commencement of the Bill and the date of poll of the first House of Lords elections.

406. Under the Representation of the People Act 1985, an individual can only register to vote as an overseas elector if they have previously been registered as a parliamentary elector on the basis of residence at an address in the UK in the last 15 years. As peers disqualified from the Parliamentary franchise by virtue of their peerage will not be able to meet this criteria (until commencement of this provision), the Bill provides that if a peer is included in the register of local electors published before clause 61(1) comes into force then they will be eligible to register as an overseas Parliamentary elector from the point the provisions are commenced, provided they meet the other relevant criteria.

407. *Paragraph (7)* specifies that Clause 60(2), which makes clear that peers are not disqualified from standing for election to both Houses, shall not have effect prior to the first qualifying Parliamentary election if it commenced before that point. This means that sitting peers will not be entitled to stand for election at a Parliamentary election (including a by-election) in the period between commencement of the provision and the first qualifying election.

### **Clause 62: Power to disclaim life peerage**

408. This clause provides that a person who holds a life peerage may at any time disclaim that peerage by writing to the Lord Chancellor. The person will be divested of all rights and interests attaching to the peerage.

### **Clause 63 and Schedules 8 and 9: Consequential and transitional provision and savings**

409. *Subsection (1)* introduces Schedule 8 which makes consequential amendments to existing legislation. Paragraph 5 of Schedule 8 repeals the Bishoprics Act 1878 and paragraph 19 repeals the House of Lords Act 1999. *Paragraph 13* repeals section 3 of the Representation of the People Act 1983.

410. Subsection (2) introduces Schedule 9 which makes transitional arrangements including those in relation to functions and consultation duties relating to salaries and allowances, membership of IPSA and the Speakers' Committee for the IPSA. The Schedule also includes transitional provisions relating to lifting the bar on peers voting at elections to either House of Parliament.

#### **Clause 64: Orders and directions**

411. This clause makes provision in connection with the various powers in this Bill to make orders and regulations. The affirmative resolution procedure applies to instruments made under the powers listed in subsection (6). The effect of subsection (3) is that all other powers are subject to the negative resolution procedure, except for powers listed in that subsection (4)(a) to (c).

#### **Clause 65: Interpretation**

412. This clause defines the terms which are used in this Bill.

#### **Clause 66: Extent**

413. This clause sets out the extent of the provisions of the Bill. This is detailed in paragraphs 29 and 30 above.

#### **Clause 67: Commencement**

414. Clauses 64 to 68 come into force on Royal Assent. The other provisions of the Bill are to be brought into force by means of orders made by the Minister. Such orders may make transitional, transitory or saving provisions for the purposes of the Bill or appoint different days for different purposes.

#### **Clause 68: Short title**

415. This clause sets out the short title of the Bill.

### **FINANCIAL EFFECTS**

416. The overall cost of the reformed House of Lords will depend to a significant degree on the pay and pensions, and allowances (including staffing allowances) of members. The Government proposes that pay and pensions should be set by the IPSA in consultation with appropriate bodies. However, the number of members will be reduced to around 300 members, less than half its current size.

### **PUBLIC SECTOR MANPOWER**

417. These provisions have no substantial effect on public sector manpower.

### **IMPACT ASSESSMENT**

418. The draft Bill does not have an impact on business, the third sector or the public sector frontline.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

419. Although section 19(1) of the Human Rights Act 1998 does not require a minister to sign a statement of compatibility with the Convention rights in relation to a draft Bill, the Bill raises a number of human rights issues which will be of importance during its scrutiny.

420. Subject to one matter which arises indirectly, in the view of the Government the Bill is compatible with the Convention rights as defined by section 1 of the 1998 Act and, but for that matter, it would be possible for a minister to make a statement of compatibility under section 19(1)(a) of the Act. That one matter is the entitlement of prisoners to vote. This is dealt with in paragraphs 445 to 447.

### **Relevant Convention rights**

421. The article which is most frequently engaged by provisions in the Bill is Article 3 of Protocol 1 (right to free elections), which states that –

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

422. In the first case under the article to be considered by the Court, *Mathieu-Mohin v Belgium* (1987) 10 EHRR 1, the Court stated that the rights in Article 3 of Protocol 1 were not absolute but could be made subject to limitations or conditions. It set out the test which has frequently been repeated in subsequent cases: ‘[the Court] has to satisfy itself that the conditions do not curtail the right in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate.’

423. In *Yumak and Sadak v Turkey* (2008) App. No. 10226/03 the Grand Chamber said that ‘in examining compliance with Article 3 of Protocol No. 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people.’

424. In *Zdanoka v Latvia* 45 EHRR 478 App. No. 58278/00 the Grand Chamber said of Article 3 of Protocol 1 that ‘the Court reaffirms that the margin [of appreciation] in this area is wide ... There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision...’

425. Other articles which may be engaged are Articles 6 (right to a fair trial), 7 (no punishment without law), and 14 (prohibition of discrimination) and Article 1 of Protocol 1 (protection of property).

### The powers of, and relationship between, the two Houses

426. Clause 2(1) provides that, with limited exceptions, nothing in the Bill is to affect the powers, rights, privileges or jurisdiction of either House of Parliament, the conventions governing the relationship between them or the primacy of the House of Commons. In *Moureaux v Belgium* (App. No. 9267/81) the Commission considered the relationship between the Belgian national parliament and regional councils, in which infringements of Articles 1 and 3 of Protocol 1, either alone or with Article 14, were alleged. It held that 'in principle every High Contracting Party organises its national territory, from the administrative point of view, according to political and institutional criteria, which the organs of the Convention are not competent to supervise.... It also follows that the organisation of legislative power, when apportioned between Parliament and the different territorial entities, is exclusively a matter for the same organs.' The government sees no reason why the same principle should not apply to the powers of, and relationship between, the two Houses of the national legislature, so that this falls outside the scope of the Convention.

### The composition of the House of Lords

427. In its eventual form the House of Lords is to consist of 240 elected members, 60 appointed members and up to 12 supernumerary, ex officio Archbishops and diocesan bishops of the Church of England.

428. The Government is not aware of any Strasbourg case-law on the composition of the second chamber of a member state of the Council of Europe. There is a variety of types of membership: in the Czech Republic all members of the Senate are directly elected; in Austria all members of the Bundesrat are indirectly elected; the Seanad in Ireland includes appointed members; the Senate in Italy includes a few appointed members and a few ex officio members; the Belgian Senate contains directly elected members, indirectly elected members, co-opted members and hereditary/ex officio members. In other words, while first chambers must be elected by the people in order to comply with the Convention, second chambers will frequently have a different form of composition, which may or may not involve direct election. If one looks beyond Council of Europe member states, all the members of the Canadian Senate are appointed. The Government does not consider that the proposed composition of the House of Lords, with its mixture of elected, appointed and ex officio Lords Spiritual, raises in itself any issues relating to the Convention rights.

### The departure of existing members of the House of Lords

#### *Loss of membership*

429. Although it will be possible for current members of the House of Lords to become elected or appointed members of the House of Lords, the effect of clause 1 is that after the end of the second transitional period all life peers and hereditary peers who are now members of the House of Lords will have ceased to be members of the second House. Under clause 35 and Schedule 6, a maximum of two thirds of the existing members at the date of introduction of the Bill may be selected as transitional members for the first transitional period and a maximum of one third of those existing members may be selected as transitional members for the second transitional period.

Transitional members will be selected in accordance with standing orders of the House of Lords.

430. The number of Lords Spiritual would also be reduced over the transitional periods, from the present number of 26 to a maximum of 12.

431. The question arises whether the loss of membership of the second House engages any Convention rights and, if so, whether it is compatible with them. The articles which may be engaged are Article 6 and Articles 1 and 3 of Protocol 1.

432. Whether article 6 applies depends on whether there is a civil right or obligation. In *X v United Kingdom* (App. No. 8208/78) the Commission considered "that the right to participate in the work of the House of Lords cannot be regarded as a 'civil right' within the meaning of Article 6. It is of the opinion that such a right, connected as it is to the composition of part of the legislature, falls into the sphere of public law rights outside the scope of Article 6". The same reasoning applied to whether membership of the House of Lords was an obligation within the article. The same conclusion has been reached by the Strasbourg authorities in more recent cases in relation to other matters concerning elections and legislatures (see for example *Estrosi v France* App. No. 24359/94, *Tapie v France* App. No. 32258/96, *Gorizdra v Moldova* (App. No. 53180/99) and *Boskoski v FYROM* (App. No. 11676/04)).

#### *Loss of allowances and salary*

433. On leaving the House of Lords, Lords Temporal and Spiritual will no longer be entitled to receive allowances or (in the case of transitional members) a salary. In *Pierre-Bloch v France* (1997) 26 EHRR 202 the Court held that proceedings relating to disqualification from elected office which also dealt with the repayment of money following the exceeding of expenditure limits for candidates were not civil proceedings within article 6 merely because they raised an economic issue. The right to stand for election was a political right, not a civil one.

434. Although Article 1 of Protocol 1 was not raised in *X v UK* or *Pierre-Bloch v France* the Government considers that the clear implication of those cases is that the likelihood of the future salary or allowances of a member of a legislature, or membership itself, being taken to be a possession within the meaning of that article is very low. Even if the article was engaged, the Government considers that any interference with property rights would be justified as being a necessary part of the legitimate aim of the reform of the House of Lords, in which the public interest in reform outweighs any interest of an individual member in a possession relating to membership. The time-limited nature and eventual loss of the salary is a necessary consequence of the loss of membership.

#### *Article 3 of Protocol 1*

Nor does the Government consider that the departure of members of the Lords in the capacity of peers would constitute a breach of Article 3 of Protocol 1. When the House of Lords Privileges Committee considered the departure of the majority of hereditary peers by the House of Lords Bill in 1999, in *Lord Mayhew of Twysden's Motion [2002] IAC 109*, Lord Slynn said that he did not consider it 'seriously

'arguable' that this was a breach of the United Kingdom's obligations under Article 3 of Protocol 1.

#### Frequency of elections

435. Clause 4 provides that House of Lords elections are to take place at the same time as elections to the House of Commons, except that there will be no House of Lords election where there is a Commons election less than two years since the previous House of Lords election. This is to prevent members from serving shorter terms than is considered desirable. Having simultaneous elections, apart from the exception, means that it will not be possible for the House of Lords to have a more recent popular mandate than the House of Commons, which will continue to have primacy.

436. Article 3 of Protocol 1 requires there to be elections 'at reasonable intervals'. There is very little case law about this phrase, but in *Timke v Germany* (App. No. 27311/95) the Commission declared inadmissible a challenge to an increase from four to five years between certain Land elections. It stated that 'Too short an interval between elections may impede political planning for the implementation of the will of the electorate; too long an interval can lead to the petrification of political groupings in parliament which may no longer bear any resemblance to the prevailing will of the electorate. In the light of these considerations it cannot be said that a five year interval does not ensure the free expression of the opinion of the people in the choice of legislature.'

437. Under the Fixed-term Parliaments Bill elections to the House of Commons will normally be every five years, which will therefore be the normal frequency for elections to the House of Lords. This would be a reasonable period according to *Tinker*. However, it will be possible for there to be a period of up to seven years between House of Lords elections if there is an early Commons election. This meets the aim of ensuring that members serve a long (but non-renewable) term, which the Government considers to be a legitimate aim.

438. It should also be borne in mind that the House of Lords is only one part, and the subordinate part, of the legislature. There will continue to be elections to the House of Commons at least every five years and two months. Indeed, the reason why there could be a longer period than five years between House of Lords elections is that there will have been a shorter period between Commons elections. In the light of the provisions with regard to both Houses, taken as a whole, the Government believes that those relating to the House of Lords are reasonable. As has been noted, states have a wide margin of appreciation in their compliance with Article 3 of Protocol 1 and in the Government's view it is likely that there could be several approaches to the frequency of House of Lords elections, all of which would be legitimate.

#### Elected (and appointed) members' term of office

439. Under clause 6 elected members will serve for three electoral periods, ie normally for about fifteen years. The same applies to appointed members. (There are some exceptions, in both cases, with regard to people who fill vacancies.) The question arises whether the term is so long that the presence of some members no longer gives effect to the will of the people. The Government regards it as a legitimate

aim to differentiate between the two Houses of Parliament in this area. The reformed House of Lords is intended to retain the more independent, less party-political nature of the current House. That is partly achieved by having members of the House of Lords serve longer terms. In the Government's view this is a proportionate measure, which does not interfere with the free expression of the will of the people. There will continue to be elections for a third of the members of the House of Lords about every five years, so that the composition of the House of Lords can still change to reflect the changing political will of the people. In addition, taking the legislature as a whole, there will continue to be elections of all members of the House of Commons roughly every five years. The Government considers that this provision falls within the margin of appreciation in the organisation of a state's legislative and electoral system.

440. The same arguments apply to appointed members, who will also be appointed in thirds about every five years.

### Electoral system

441. Clause 7 provides that elections to the House of Lords are to use the single transferable vote system. This is the system which is used in Northern Ireland for elections other than elections to the House of Commons.

442. The Strasbourg jurisprudence shows that states are not obliged to follow any particular electoral system, provided that it is capable of complying with Article 3 of Protocol 1. The Court said in *Bompard v France* (App No 44081/02), 'as regards the method of appointing the "legislature", Article 3 provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that, it does not create any "obligation to introduce a specific system".'

443. In *X v UK*, App. No. 7140/75 and *the Liberal Party, R and P v UK* (App. No. 8675/79) the Commission considered the system for elections to the House of Commons. In the latter case the Commission stated that 'Article 3 of the First Protocol may not be interpreted as an article which imposes a particular kind of electoral system which would guarantee that the total number of votes cast for each candidate or group of candidates must be reflected in the composition of the legislative assembly. Both the simple majority system and the proportional representation system are therefore compatible with this article.'

### Franchise

444. Clause 8 provides that those who may vote in elections are to be the same electors who may vote in elections to the House of Commons. There are no longer any restrictions on peers voting and members of each House may vote in elections to each House.

445. The only issue which arises here is that of the entitlement of prisoners to vote.

446. In 2005 in *Hirst v UK* (No 2) (2006) 42 EHRR 41) the Grand Chamber of the European Court of Human Rights found that the blanket ban on serving prisoners voting (in section 3 of the Representation of the People Act 1983) was incompatible with Article 3 of Protocol 1 of the European Convention on Human Rights (the right

to free and fair elections). A wide margin of appreciation was afforded to the UK but the blanket ban was outside that margin as it was a “blunt instrument” which “strips the convention right to vote to a significant category of persons and does so in a way that is indiscriminate” (para 82). Section 3 of the Representation of the People Act 1983 remains unchanged and serving prisoners in the UK continue to be barred from voting.

447. In the case of Greens and MT v UK (application Nos. 60041/08 and 60054/08) the Fourth Section of the European Court of Human Rights set a six month timeframe for the UK to bring forward legislative proposals to amend the legislation in compliance with the Hirst judgment. The Court highlighted that it was for the Government to decide how to achieve compliance with the convention (paras 114-115). The Government is considering its next steps. The six-month deadline expires on 11 October 2011.

### Conduct of elections

448. Clause 9 gives the relevant minister (the Lord President of the Council or the Secretary of State) power to make secondary legislation governing the conduct of elections to the House of Lords. This is similar to powers relating to elections to the European Parliament, the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. Such legislation will have to be drafted to allow for the elections to be free and to be conducted by secret ballot in order to comply with Article 3 of Protocol. The clause itself is compatible with the Convention rights.

### Vacancies

449. Clauses 10 to 14 provide for the filling of vacancies where a person ceases to be an elected member for whatever reason. It has been decided that vacancies should not be filled by by-elections, as in the House of Commons. It would not be possible to hold a by-election for a single seat by using the proportional STV system. A single member system, such as first past the post or the alternative vote system, would have to be used. In addition to this inconsistency in voting systems, it is estimated that each by-election would cost some £8 to £10 million to hold and there is a risk of low turn outs for an election for a single House of Lords seat.

450. Although Article 3 of Protocol 1 requires the holding of elections to ensure the free expression of the opinion of the people, this requirement, as has been noted, is not absolute and may be made subject to conditions, provided that they do not curtail the relevant rights so as to impair their very essence and deprive them of their effectiveness, that they are imposed for a legitimate aim and that they are not disproportionate. In the Government's view these conditions are met in relation to the non-holding of by-elections. The right to elect members of the House of Lords is not being deprived of its effectiveness altogether. Although the length of a member's term is such that more vacancies can be expected than happens in the House of Commons, the number of vacant seats will still only be a small proportion of the number of seats in the House of Lords. The substitute member will only serve until the next House of Lords election. And in cases in which the vacancy is not filled, this will be for no more than six months, which in the Government's view is not an unreasonably long period, particularly given that members of the House of Lords will not be representing constituents in the same way that MPs do. Nor will the choice of the person to fill the

vacancy be arbitrary. It will be filled by a person who has stood for election and who will in most circumstances have obtained a reasonable number of votes. Financial expediency and the desirability of consistency in the voting system appear to us to be legitimate aims. The Government considers this to be a proportionate means of filling a vacancy without having a by-election.

### Appointed members

451. The Government considers that there is only one possible human rights issue in relation to the provisions on the arrangements for the appointment of members. Paragraph 5 of Schedule 4 provides that Her Majesty may remove the chair and other members of the Appointments Commission on an address of both Houses of Parliament. The question arises whether this engages Article 6 on the right to a fair trial or, even if it does not, whether a fair procedure is guaranteed.

452. In *Eskelinen v Finland* (2007) 45 EHRR 1, the Court said that it was permissible for states to justify excluding a civil servant from the protections in Article 6 if the dispute in question was related to the exercise of State power or has called into question the "special bond of trust and loyalty" between the civil servant and the state. Given that under the Bill decisions to remove members of the Appointments Commission are considered sufficiently important to be given to Parliament, it is arguable that the criteria in *Eskelinen* apply and that Article 6 does not apply.

453. Whether or not Article 6 applies, the Government takes the same view as had been taken with regard to similar provisions about the removal of the Comptroller and Auditor General which had been in the Constitutional Reform and Governance Bill in 2009 and were then enacted in the Budget Responsibility and National Audit Act 2011, that it will be a matter for Parliament to ensure that the procedures for removal are fair and that there are appropriate safeguards for the office-holder.

### Disqualification

454. Part 6 of the Bill sets out grounds for disqualifying prospective and serving members of the House of Lords. These very largely follow the provisions which apply to the House of Commons. With one exception they are the same for elected and appointed members, but some different provisions apply in respect of transitional members and Lords Spiritual. Disqualification potentially engages Articles 6 (right to a fair trial), 7 (no punishment without law) and 14 (prohibition of discrimination) and Articles 1 (protection of property) and 3 (right to free elections) of Protocol 1.

### *Article 6 and Article 1 of Protocol 1*

455. So far as Article 6 and Article 1 of Protocol 1 are concerned the Government takes the same view as has been set out in respect of the departure of members of the House of Lords. These two articles are not engaged because membership of a legislature has been held to be a political right and not a civil right or, implicitly, a possession (whether one considers the right itself or the trappings of the rights such as a salary). The Government relies again on *X v UK*, *Tapie v France* (App. No. 32258/96) and *Pierre-Bloch v France* (App. No. 24194/94). The two French cases related to the disqualification of two MPs, the first on the grounds of bankruptcy and

the second on the grounds of exceeding the limit on election expenses. Even if Article 1 of Protocol 1 was engaged, the Government believes that the public interest in maintaining and enhancing the reputation of Parliament justifies any interference with an individual's possessions.

456. Whether or not Article 6 is engaged, it is of course important that members and prospective members of the House of Lords are treated fairly when allegations of misconduct are concerned. In the case of a criminal offence and insolvency the disqualification would follow the finding of a court. In the case of expulsion it will be a matter for the internal procedures of the House of Lords to ensure fairness.

#### *Article 3 of Protocol 1*

457. As has been stated, so far as Article 3 of Protocol 1 is concerned it is clear that the right to stand for election, which is included within it, is not an absolute right and conditions may be imposed on it. In *Krasnov and Skuratov v Russia* (App. Nos. 17864/04 and 21396/04) the Court said that 'States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. Though originating from a common concern – to ensure the independence of members of parliament, but also the electorate's freedom of choice – the criteria vary according to the historical and political factors peculiar to each State. The number of situations provided for in the Constitutions and electoral legislation of many member States of the Council of Europe shows the diversity of possible choice on the subject. None of these criteria should, however, be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections (see *Podkolzina v Latvia* and *Gitonas and others v Greece*).

458. It is considered that all the grounds of disqualification in the Bill satisfy the criteria referred to in paragraph 457, that there is been no arbitrariness or a lack of proportionality, and that the restriction does not interfere with the free expression of the opinion of the people.'

#### *Age*

459. The age condition pursues the legitimate aim of ensuring that the House of Lords consists of people with sufficient maturity and experience and who are of voting age. In *W, X, Y and Z v Belgium* (App. Nos. 6745/74 and 6746/74) the Commission held that a qualifying age of 40 for the House of Lords was legitimate and that an age of 25 for the House of Representatives was 'obviously' not arbitrary or unreasonable.

#### *Nationality*

460. The nationality condition pursues the legitimate aim of ensuring that members have close links to the United Kingdom, for whose people they will be legislating and representing. The additional inclusion of certain Commonwealth citizens and citizens of the Republic of Ireland can reasonably be justified on the basis of the special historical traditions and special ties with those countries.

### *Disqualifying office*

461. The disqualification of holders of certain public offices meets the legitimate aim, in the case of elected members, of ensuring that such members are full-time members of the House of Lords, available to participate fully in the carrying out of its functions.

462. In the case of appointed members, the presumption is also to be that the holders of these offices should be disqualified. However, it is considered important to have members of the House of Lords with a wide range of experience, including current experience, in a variety of fields. It is therefore to be possible for the relevant minister to make an order specifying otherwise disqualifying offices which appointed members may hold. The distinction between elected and appointed members is considered justifiable, and not to raise any issues under Article 14, on the grounds that the majority of the former are likely to be people with strong party political affiliations whereas the latter are not and it is in the interests of the functioning of the second House that it includes people of wider experience. Given that the presumption will be that the disqualifying offices will apply to both elected and appointed members the Government believes that the use of a ministerial power is a proportionate approach.

463. Disqualification on this ground will only last while the person holds the office and so it cannot be said to impair the very essence of the right (see *Ahmed v UK* (1998) 29 EHRR 1, in which the Court held that the prohibition on local government officers standing for election met the legitimate aim of securing the political impartiality of the officials). Furthermore, clause 49 provides that where a person has been disqualified on this ground (and certain others) but the ground no longer applies, the House of Lords may agree that the disqualification is to be disregarded. It would therefore be possible for a person to resign his disqualifying office and remain a member of the House of Lords.

### *Insolvency orders and serious offence condition*

464. People who are subject to an insolvency order are disqualified for membership of the House of Lords. An insolvency order, which is defined in clause 46 as a bankruptcy restrictions order or a debt relief restrictions order under Schedules 4A and 4ZB to the Insolvency Act 1986, and equivalent legislation in Scotland and Northern Ireland, may be made against someone who is bankrupt and who has also been guilty of some misconduct. Bankruptcy itself is not a disqualifying ground.

465. Under the serious offence condition in clause 47, a member or prospective member will be disqualified while they are imprisoned or detained indefinitely or for more than a year for an offence, wherever committed.

466. These two limitations meet the legitimate aim of ensuring the credibility and reputation of the House of Lords as a House of Parliament by prohibiting people who have received a serious penalty from representing the public and legislating on their behalf. High standards are to be expected of members and prospective members of both Houses of Parliament. In the Government's view they are not arbitrary or disproportionate.

*Retrospective nature of the serious offence condition*

467. Under clause 47 the serious offence condition is to apply whether the offence or the conviction took place before or after commencement of the Act. The provision is similar to that which applies to the House of Commons, in section 1 of the Representation of the People Act 1981.

468. It is considered necessary to say that (assuming the commencement of the Act in 2015) a person who in 2025 was in prison for a crime committed in 2014 should be ineligible to become a member in the same way as a person whose crime was in 2016. Similarly, a person who was elected in 2015 and was then imprisoned in 2017 for a crime committed in 2014 should be treated in the same way as a person imprisoned for a crime committed in 2016. Differences between such situations seem difficult to justify.

469. This retrospective aspect of the serious offence condition engages Article 7 (no punishment without law), which provides that "a heavier penalty [shall not] be imposed than the one that was applicable at the time the criminal offence was committed." Compatibility turns on whether disqualification amounts to a penalty. In the leading case, *Welch v UK* (1995) 20 EHRR 247, the Court said that "the starting-point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a 'criminal offence'. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity."

470. Clearly, the sanction would be imposed following conviction for a criminal offence. But taking the other factors into account the Government considers that there are good arguments for saying that disqualification is not a penalty for the purposes of Article 7. Disqualification is not an ordinary penalty like imprisonment or a fine. Its purpose is to preserve and enhance the reputation of Parliament, not to punish an offender. It would be applied automatically, without being linked to, or requiring any further consideration of, the culpability of the individual concerned. It is not of general application but only affects a specific group of members or prospective members of the House of Lords. Nor is it sufficiently severe to amount to a penalty (see *Tapie v France* and *Estrosi v France*, mentioned above).

471. The provision would apply only to periods of imprisonment or detention of more than one year, or indefinite ones. In other words, it would be limited to offences which may reasonably be classified as serious. Fair trial safeguards would, of course, have applied to the individuals in respect of their conviction and sentence. It would also apply, in the case of a prospective member, only while they were imprisoned or detained. If they had served their term they would be eligible for membership. And where a conviction was quashed or the sentence reduced to 12 months or less, the person would be entitled to become a member again (an exception to the ordinary provision that members may not be re-appointed or re-elected).

472. It has been recognised for some time that the powers of the House of Lords on matters of conduct and discipline are not as wide as those of the House of Commons and that they are inadequate. The House of Lords should not be placed in

the same position as the House of Lords, which cannot at present deal with some matters, including past offences, effectively.

473. The Government considers that it is in the public interest to require a degree of personal probity in members and prospective members of the House of Lords and to take steps to ensure the reputation of that House of Parliament, and that it is necessary and proper, in achieving those aims, for the serious offence condition to include a retrospective element. In the Government's view, giving the serious offence condition retrospective effect is a proper provision to make and one which does not infringe Article 7.

#### *Cooling-off period*

474. Clause 55 imposes a restriction on former members of the House of Lords being elected as MPs. Former members may not become members of the House of Commons for a period of four years and 1 month after their membership of the House of Lords ceases. A similar restriction was recommended by the Wakeham Commission and that the Commission concluded that there would be no infringement of Article 3 of Protocol 1.

475. Restricting the limitation to four years and 1 month means that the essence of the right would not be impaired, as the restriction would not be permanent and would in most cases apply to only one general election. The Government also takes the view that it is a legitimate aim to prevent people from cultivating constituencies and using membership of the House of Lords as a springboard for a Commons career, to the neglect of their responsibilities as full-time members of the House of Lords. (The same does not apply to people leaving the House of Commons and going to the House of Lords.) There is a particular concern that a person might resign well before the end of their term in order to stand for the Commons. The Government wishes the House of Lords to retain the independent character of the House of Lords and hopes that it will not attract people whose aim is a strongly party political career in the House of Commons. This is less likely to happen if members are unable to move straight from the House of Lords to the Commons.

476. In the Government's view the length of the period is proportionate and does not impose an arbitrary or unreasonable restriction on members of the House of Lords. It notes the statement of the European Court of Human Rights in *Gitonas v Greece*, that "States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification."

477. Compatibility with Article 14, the right not to be discriminated against, might also be argued to arise in relation to the cooling-off period, because there is no restriction on a member of the European Parliament, Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly or a local authority from standing for the Commons as soon as their membership ends. However, even assuming the likelihood (though this is not certain) that the courts would hold that this was a situation in which people in analogous circumstances were being treated differently on account of their status, the Government takes the view that the different treatment serves a legitimate aim and is proportionate. The two Houses of Parliament are parts of the same legislature, responsible to the same electors for the same macro-

geographical area, and dealing with very largely the same issues. There is a relationship, and potential tensions, between them which does not exist between the House of Commons and the other bodies. The cooling-off period is part of the way in which that relationship is to be governed and it is legitimate to provide that the period should apply in relation to members of the House of Lords but not to members of other bodies.

#### *Previous membership of the House of Lords*

478. With limited exceptions (relating to vacancies and the insolvency and serious offence provisions) a person who has served a term as an elected or appointed member of the House of Lords will not be able to become a member of the House of Lords for a second time. Given that members will serve for about 15 years the Government does not believe that this restriction impairs the essence of the right, in the case of elected members, to stand for election. Furthermore, the fact that members will not be able to serve a second term may help to enhance their independence, as they will not have to follow a line advocated by their party or a section of the electorate. In any event, it will be possible for former members of the House of Lords to stand for election to the House of Commons after the end of the cooling-off period.

#### *Transitional members*

479. There are different provisions on disqualification for transitional members from those which apply to elected and appointed members. The insolvency and serious offence conditions will both apply to them. The age limit of 18 could not apply, since the present age limit for membership of the House of Lords is 21. The disqualifying office ground will not apply, since it will not have done so when a transitional member entered the House of Lords and it is considered unreasonable to impose a condition in the middle of a person's term of membership. For the same reason, although the nationality condition may apply (although it is unlikely to do so in practice), it will do so in the terms which currently apply to members of the House of Lords. The Government considers that all these differences of treatment are justifiable and that there is no infringement of Article 3 of Protocol 1, whether on its own or taken with Article 14.

#### Expulsion and suspension

480. The Government considers that the legitimate aim which applies to disqualification also applies to the power to expel a member. It will for the standing orders of the House of Lords to determine the circumstances in which the power may be exercised, but in so doing they will have to ensure that a person may only be expelled where this is a proportionate response to the misconduct, in order to ensure compliance with Article 3 of Protocol 1. It will also be for the standing orders to ensure that the process is fair, notwithstanding the fact that Article 6 is not engaged.

#### Tax status of members

481. Clause 60 provides that a person who is a member of the House of Lords (other than a Lord Spiritual) for any part of a tax year is to be treated for the purposes of income tax, capital gains tax and inheritance tax as resident, ordinarily resident and domiciled in the United Kingdom for the whole of that tax year. It very largely

follows the existing provision in section 41 of the CRAG Act 2010 (which apply to both members of the House of Commons and members of the House of Lords).

482. This raises the question whether the provision is compatible with Article 1 of Protocol 1 (protection of property). It is clear from case law that states are afforded a very wide margin of appreciation with regard to this article and it is rare for courts to find that tax measures are incompatible with it.

483. In the present case, the provision has a legitimate aim, that of ensuring that members of a part of the United Kingdom's legislature pay UK taxes so as to strengthen the electorate's confidence in the legislature. This aim also provides a reasonable and objective justification when it comes to considering whether there is any breach of Article 14 on discrimination, to the extent that it can be argued that members of the Houses of Parliament are being treated differently from other people on account of their status (ie as members of a legislature).

484. The relevant question is whether a tax provision places "an individual and excessive burden" such as to render the provision "devoid of reasonable foundation" (*R (Federation of Tour Operators) v HM Treasury* [2008] EWCA Civ 752).

485. Although it might be argued that it is unfair and disproportionate for the length of the deemed tax status to be longer than the period of membership, since it begins at the start of the tax year in which membership begins and ends at the end of the tax year in which membership ceases, it is impracticable to amend a person's tax status in the middle of a tax year, and it is necessary for the provision to cover both the beginning and end of membership. Nor is it likely that the period between the beginning of the tax year and the beginning of membership will be very long, since the default position under the Fixed-term Parliaments Bill is that elections will be held in May. The Government considers that it is unavoidable that a part of a year in which a person is not a member of the House of Lords is covered by the provision.

486. It will also be possible for the deemed tax status to be avoided. Candidates for election or appointment to the House of Lords would be aware in advance of the consequences of becoming a member. Furthermore, the (assumed minority of) members who do not already pay tax in the UK on an ROD basis will be able to rely on double taxation agreements and unilateral relief for tax paid overseas to prevent them being taxed twice on the same income or gains.

487. In the Government's view the provision has a legitimate aim which it effects fairly and proportionately, without imposing arbitrary or excessive requirements. The Government does not consider that there is any infringement of Article 1 of Protocol 1 or of Article 14.

## **Lords Spiritual and Article 14**

488. There are a number of provisions in the Bill which apply differently to Lords Spiritual from other members. Lords Spiritual will receive no salary in respect of their membership of the House of Lords and the provisions on taxation, suspension and expulsion and the majority of the disqualifying grounds will not apply to them. It may therefore be questioned whether any of these provisions infringe Article 14, taken with other articles, because they discriminate on the grounds of religion.

489. It is significant that in some respects the different treatment might appear to treat Lords Spiritual more favourably (eg the non-application of the expulsion provisions) but in another it might appear to treat them less favourably (the non-application of the salary provisions). To that extent, there is no question of the Bill as a whole giving preferential treatment to Lords Spiritual as against other types of member.

490. More importantly, however, in the Government's view the basis for the differences in treatment is not religion but the nature of the membership as a Lord Spiritual. This membership is both ex officio and part-time and is tied to the individual's positions in the Church of England. A bishop's salary is payable by the Church of England and the Government would expect disciplinary measures (excluding those of the criminal law) to be taken by the Church of England. Were an Lord Spiritual to be imprisoned, the reputational damage caused by his conduct would primarily be to the Church of England and not to the House of Lords.

491. Different treatment was made in the CRAG Act 2010 on taxation, which is being continued in this Bill. The Constitutional Reform and Governance Bill also included provisions on expulsion, suspension, and disqualification for insolvency and imprisonment, all of which are similar to the provisions of this Bill and all of which treated Lords Spiritual differently from Lords Temporal. (The provisions were taken out of the Bill, along with several other matters, in order to ensure that the main parts of the Bill could receive Royal Assent before the general election in 2010.)

492. Lords Spiritual are in a different position from other members of the House of Lords and as such the two may not be in an objectively comparable position under Article 14. And the Government takes the view that the basis for the different treatment is the nature of the membership, not the fact that the members are bishops of the Church of England as opposed to representatives of other Christian denominations, other faiths or of no faith. If there were other members who were ex officio or part-time, it would not be unexpected if they were to be treated differently from full-time elected and appointed members, although there might be no status under Article 14 which could apply.



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